REPORT OF THE ADVISORY GROUP

OF THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPOINTED UNDER THE

CIVIL JUSTICE REFORM ACT OF 1990

DECEMBER 11, 1992

THE ADVISORY GROUP

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LIST OF RECOMMENDATIONS

1. Civil and Criminal Dockets

Recommendation 1: The Court should schedule criminal and other civil matters so as to reduce interruptions during the trial of a civil case.

2. Civil Docket Schedules

Recommendation 2-1: In a multi-week trial, the Court should schedule the jury trial for four days a week, rather than five.

Recommendation 2-2: The Court should use separate and consecutive jury selection at the beginning of the jury docket, rather than selecting a jury when each case commences.

Recommendation 2-3: The Court should encourage litigants to try their cases before a Magistrate Judge by permitting attorney voir dire, offering firm trial dates, and permitting jurors to take notes or be given a trial notebook.

3. Judicial Involvement in Pretrial Preparations

Recommendation 3-1: The Court should consider scheduling an early Article III Judge conference in each case, concurrent with filing the joint discovery plan by the parties, thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

Recommendation 3-2: The Court should expand the present use of exhibit conferences and the preadmission of exhibits and demonstrative aids.

4. Discovery

a. Controlling Discovery

1) Discovery Plan

Recommendation 4-1: The Court should order both parties to submit a joint preliminary discovery plan to the Court within a short time after the filing of a responsive pleading by the defendant. This discovery plan would:

- identify, by name or subject, all witnesses each party would want to depose;
- outline information to be sought by formal request or interrogatory;
- estimate anticipated discovery costs; and
- inform the Court what dispositive motions are foreseen

by the parties.

Counsel must certify to the Court that:

- the joint discovery plan has been reviewed with the client;
- the client has approved of the plan; and
- the client has been furnished a copy of "Alternative Dispute Resolution in the Northern District of Oklahoma" and has reviewed this pamphlet with counsel.

2) Extent of Discovery

Recommendation 4-2: Depending on the nature and complexity of the case, the Court, at its Article III Judge conference, should consider setting preliminary limits on the amount of all forms of discovery, with attorneys later having the right to ask to expand or reduce discovery.

3) Insuring Compliance with Appropriate Requested Discovery in a Timely Fashion

Recommendation 4-3: The Court should continue to encourage the practice of good faith compliance with appropriate requested discovery.

b. Effort by Parties to Resolve Discovery Disputes

Recommendation 4-4: The Court should continue to use a good faith conference requirement between opposing counsel as a condition precedent to filing a discovery motion and a motion in limine.

c. Approval of Deadline Extensions

Recommendation 4-5: The Court should continue the practice of having counsel, rather than client, request extensions of time, and these requests should be granted by the Court as appropriate.

d. Voluntary Disclosure and Cooperative Discovery

Cooperative discovery is common practice in the Northern District of Oklahoma and therefore a recommendation is unnecessary.

e. Adjunct Discovery Judges

Recommendation 4-6: The Court should consider, in appropriate cases, using adjunct discovery judges to resolve discovery issues. Upon agreement of the parties, these adjunct discovery judges would be compensated by the parties.

f. Abatement of General Discovery During the Pendency of Dispositive Motions

Recommendation 4-7: The Court should abate general discovery in appropriate cases while dispositive motions are pending.

5. Dispositive Motions

Recommendation 5-1: The Court should rule more quickly on dispositive motions, well ahead of trial dates. This may be done by:

- continuing to limit the length of briefs;
- deciding some cases from the bench after oral argument with findings and conclusions prepared by the prevailing party;
- deciding some dispositive motions on briefs rather than after oral argument;
- adding career or long-term law clerks as needed; and
- utilizing the newly installed ICMS to apprise the Court and its clerks of the status of dispositive motions.

Recommendation 5-2: If 28 U.S.C. § 636 is revised so that a party could preserve an issue for ultimate appeal to the Circuit Court without first appealing a ruling of the Magistrate Judge to the District Court, a procedure could be developed whereby the parties could consent to refer dispositive motions to the Magistrate Judge. If a party wished to appeal the Magistrate Judge's ruling granting dispositive relief, the appeal would be to the Circuit Court rather than to the District Court.

Recommendation 5-3: The Court should continue its firm stance against dilatory motions.

Recommendation 5-4: The Court should consider limiting written explanatory orders to deserving cases.

Recommendation 5-5: Each District Court Judge should experiment with holding a motion docket for accelerated dispositive motions. Cases would be assigned to the accelerated motion docket at the Article III Judge early conference (see Recommendation 3-1) and would be subject to the following rules:

- the motion, including a citation of authorities, will be limited to five pages;
- briefs will not be filed to accompany the motion;
- oral arguments will be subject to a time limit; and
- the Court will rule from the bench with parties to prepare appropriate findings, conclusions and orders.

6. Trial Procedures

a. Referring Cases to a Magistrate Judge

Recommendation 6-1: The Court should refer cases to a Magistrate Judge when the parties stipulate that they will not appeal the Magistrate Judge's ruling to the District Court.

b. Limiting the Number of Witnesses and the Time for Testifying

Recommendation 6-2: In every case, the Court should consider limitations on the number of expert witnesses, the number of fact witnesses and the time given to testify at trial.

c. Presenting Direct Testimony by Narrative

Recommendation 6-3: The Court should experiment with permitting some witnesses, especially expert witnesses, to present their evidence on direct examination either through a narrative format or through a partial narrative format.

d. Presenting Testimony by Deposition

Recommendation 6-4: The Court should permit some witnesses, in addition to medical experts, to present their evidence through deposition even though these witnesses may be subject to subpoena.

e. Jury Selection

1) Pre-Service Screening Questionnaire

Recommendation 6-5: The Court should implement a more extensive pre-service screening questionnaire and expand the present process by which the trial judge permits each lawyer to submit and continue to submit questions for the Court to ask prospective jurors. A copy of each completed pre-service screening questionnaire should be furnished to each counsel in advance of the time the jury is called to be examined.

2) Voir Dire

Recommendation 6-6: The Judges are encouraged to consider the use of attorney voir dire in appropriate cases to supplement the initial voir dire by the Court.

f. Experts

Recommendation 6-7: In an appropriate case, the Judge should consider the use of court-appointed independent experts. In any case where a court-appointed independent expert will be used, counsel should be given an opportunity to participate in the selection process.

7. Alternative Dispute Resolution

a. Existing Alternative Dispute Resolution Programs in the Northern District

1) Pre-trial Settlement Conference

Recommendation 7-1: The Court should continue to promote pre-trial settlement conferences.

Recommendation 7-2: The Court should promote settlement efforts at the earliest possible time and continue as appropriate.

Recommendation 7-3: If an Article III Judge makes an early intervention to evaluate a case, the Article III Judge should consider suggesting an early settlement conference.

Recommendation 7-4: The Clerk's Office should distribute a brochure on alternative methods of dispute resolution to counsel to be passed on to and discussed with clients.

Recommendation 7-5: Counsel should certify in the discovery cost plan, which would be submitted to the Court prior to the early intervention by the Article III Judge, that they have delivered the ADR brochure to their clients and have discussed ADR with them.

Recommendation 7-6: The settlement administrator should develop a questionnaire to be completed by both the attorneys and the litigants at a time in the process deemed appropriate by the settlement administrator.

Recommendation 7-7: To the extent that it is feasible, a mechanism should be developed to make a settlement conference available immediately before trial if, in the view of the parties, it would be beneficial to a potential settlement of the case.

2) Adjunct Settlement Judge Program

Recommendation 7-8: The Court should continue the Adjunct Settlement Judge Program at its present level of Adjunct Settlement Judges or increase the number of Adjunct Settlement Judges at the discretion of the Chief Judge.

Recommendation 7-9: The Court should institutionalize, through the Clerk's Office, the scheduling, space allocation, and assignment of adjunct settlement judges to particular substantive cases, the assignment being in coordination with the Magistrate Judge who currently performs these functions.

Recommendation 7-10: The Magistrate Judge should be permitted to recommend to the District Court Judge the assignment of a senior adjunct settlement judge (i.e., an adjunct settlement judge who, over several years of service in the program, has demonstrated exceptional skills at settlement and has been so designated by the District Court Judges) to a case as a special project, on a paid basis, providing the case warrants such treatment and the parties consent.

3) Other Alternative Methods of Dispute Resolution Including the Summary Jury Trial

Recommendation 7-11: The Court should continue to experiment with various alternative methods of dispute resolution, including the summary jury trial.

b. Court Annexed Arbitration in the Northern District

Recommendation 7-12: The Court should not add court annexed arbitration in the Northern District of Oklahoma.

c. Standards for Settlement Conferences

Recommendation 7-13: The Court should formalize a set of guidelines to govern settlement conferences.

d. Permanent ADR Committee

Recommendation 7-14: The Court should establish a permanent Alternative Dispute Resolution Committee composed of members of the bar of this District and lay persons to advise the Court on ADR programs and implement the ADR recommendations of the Civil Justice Reform Act Advisory Group, as instructed by the Court.

8. Efficient Use of Personnel

Recommendation 8: The Magistrate Judges should conduct more trials.

9. The Need to Increase Personnel

a. Magistrate Judges

Recommendation 9-1: The Court should recommend that the number of full-time Magistrate Judges be increased from two to three.

b. Court Clerk Personnel

Recommendation 9-2: The Court should convert the temporary position that was made available through the Civil Justice Reform Act to a permanent position and have the new Deputy Court Clerk assume clerical responsibility for the adjunct settlement judge Program and have responsibility for using the new computer system and software to monitor and report civil activity.

10. Technology

Recommendation 10-1: The Court should continue to seek appropriate funds for modern technology to improve the functioning of the Clerk's Office, the Courts, and the accessibility of information by the practicing bar.

Recommendation 10-2: As new technology becomes economically feasible, the Court should install an information system which provides full text of all filed documents in a case it monitors in chambers and in the Court.

Recommendation 10-3: The Court should expand the use of conference calls where practicable.

11. Enhancing the Quality of the Documents Submitted to the Court

Recommendation 11: As a condition to admission to practice in the Northern District of Oklahoma, the Court should require each applicant to successfully complete a CLE course on the local rules and on how to write briefs for this district. The CLE course could be designed and offered by the Grievance and Admission Committee of the Northern District.

12. Educational Mission--Judicial Internships

Recommendation 12: The Court should continue to utilize Judicial Interns from The University of Tulsa College of Law and other ABA accredited law schools.

13. Local Rules

a. Local Rules Consistent with the Court's Plan

Recommendation 13-1: The Court should revise the Local Rules so they are consistent with the Plan adopted by the Court and with the increased use of technology.

b. Standing ADR Committee

Recommendation 13-2: The Court should revise the local rules to add a standing ADR Committee.

c. Uniform Local Rules Among the Three Oklahoma Districts

Recommendation 13-3: The Court should continue to work with the Chief Judges of the Eastern and Western Districts of Oklahoma to develop local rules that will apply uniformly to the three Oklahoma districts.

INTRODUCTION

Pursuant to the Civil Justice Reform Act of 1990 (the "Act"), Chief Judge H. Dale Cook of the United States District Court for the Northern District of Oklahoma (the "Northern District") appointed this Advisory Group on April 1, 1990. The Group appointed by Chief Judge Cook satisfied the Act's mandate that "the advisory group of a district Court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such Court." 28 U.S.C. § 478(b). The Advisory Group includes a former federal Judge, two newspaper editors, a number of practicing attorneys who practice extensively before this Court (with small-, medium-, and large-sized firms represented), several officers of major corporations that litigate in the district, a law professor, and a present and former United States Attorney. The three Judges of the District Court: Chief Judge Cook, Judge James O. Ellison, and Judge Thomas R. Brett; the two Magistrate Judges: John Leo Wagner and Jeffrey S. Wolfe; and the Clerk of the Court, Richard M. Lawrence, served as ex officio members of the Advisory Group. The meetings of the Advisory Group were transcribed by Angie Christesson-Bingham, a certified shorthand reporter. Biographical sketches of the Northern District's Advisory Group members and ex officio members are included in Appendix A. Since the creation of the Advisory Group, Judge Cook has taken senior status (January 1, 1992) and Judge Ellison has been appointed Chief Judge.

The Advisory Group's organizational meeting was held on May 7, 1991. At that meeting, the Advisory Group formed six subcommittees: the ADR Subcommittee, the Courts Subcommittee, the Juror Interview Subcommittee, the Lawyers Subcommittee, the Litigants Subcommittee, and the Statistics Subcommittee. The Advisory Group's Chairperson, John H. Tucker, assigned a wide range of tasks to these subcommittees. The Reporter served as ex officio member of each subcommittee.

In performing its statutory responsibilities, the Advisory Group and its subcommittees not only drew from the varied experiences of the members but actively solicited input from those interested in civil justice in the Northern District of Oklahoma. The Courts Subcommittee interviewed the three District Court Judges, the two Magistrate Judges in the Northern District of Oklahoma, the law clerks, and the personnel in the Clerk's Office. The Statistics Subcommittee sent questionnaires to 300 attorneys who regularly use the Court in the Northern District of Oklahoma and to a select number of their clients. The Lawyers Subcommittee randomly selected attorneys to be interviewed. The Juror Subcommittee also interviewed several individuals who had served as jurors in cases before the Northern District of Oklahoma.

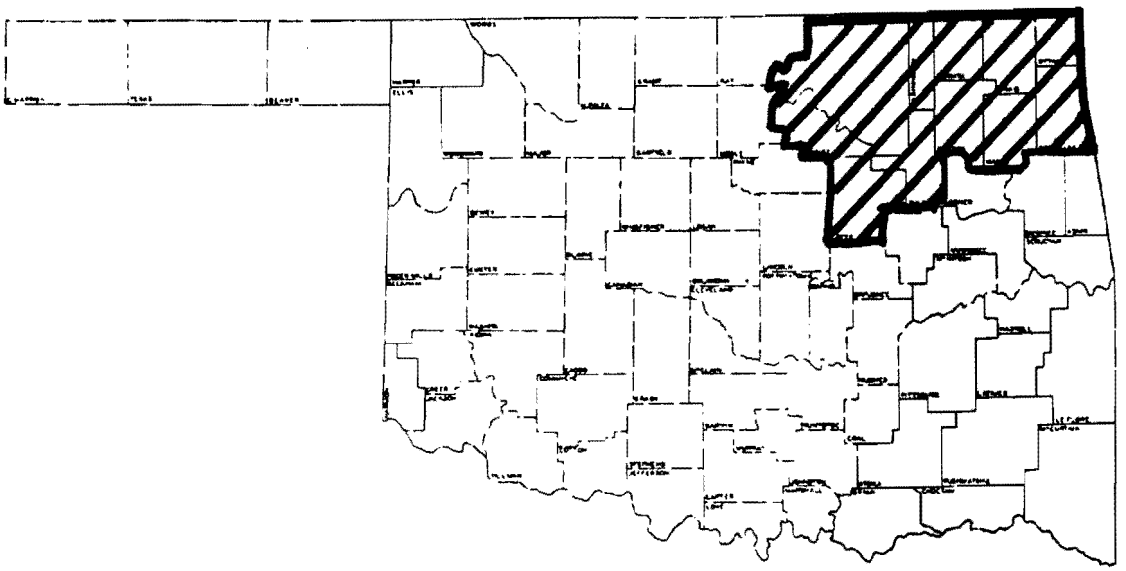
Each subcommittee established its own agenda and continued to meet until its task had been completed. Each Subcommittee reported back to the Advisory Group as information was being gathered. The Advisory Group meet as a committee of the whole on six occasions to reflect on the reports of the Subcommittees and to comment on the various drafts of this report.

The Advisory Group acknowledges with appreciation the assistance of American Airlines and Phillips Petroleum Company in the preparation and management of survey materials and statistical information presented in this Report.

I. DESCRIPTION OF THE COURT

A. An Overview of the United States District Court for the Northern District of Oklahoma

The United States District Court for the Northern District of Oklahoma, located in northeast Oklahoma, is one of three districts in the state (Northern, Eastern, and Western Districts). The Northern District serves eleven counties (8,555 square miles) with a population of 835,108. The home of the Northern District is the city of Tulsa, Oklahoma. The Northern District has never been divided into divisions.



Tulsa, the largest city in the Northern District, is the second largest city in the state. Tulsa County has a population of 503,341, about one-sixth of the total population of the State of Oklahoma (3,145,585). Tulsa was the heart of Oklahoma's early oil development and is still one of the world's major oil capitals. The city of Tulsa serves as the headquarters for several hundred producing, refining, transporting, and marketing companies active in the petroleum industry. American Airlines, the largest employer in Tulsa, has its Sabre network and a major fleet maintenance facility in Tulsa. Tulsa also has become an insurance center with several major insurance companies having regional offices in the city. Bartlesville (population 34,252), located 50 miles north of Tulsa, is the headquarters of Phillips Petroleum Company. In addition to the oil and gas industry, the service industries and various manufacturing companies, agriculture is an important element of the economy of northeastern Oklahoma. Northeastern Oklahoma, also known as "Green Country" because of its rolling hills and many lakes, offers the residents of the state and the region exceptional recreational opportunities.

1. Judicial Resources

a. District Judgeships

Currently, there are four District Judgeships authorized by 28 U.S.C. § 133, although only two regular District Judges and one senior status Judge are currently sitting. Judge James O. Ellison holds the Chief Judge position, replacing Judge H. Dale Cook who converted to senior status on January 1, 1992. Since accepting senior status, Judge Cook currently accepts 33% of the criminal cases filed in the Northern District of Oklahoma, acts as a roving judge for the Eastern District of Oklahoma, and is accepting no new civil cases on a regular basis in the Northern District. Judge Thomas R. Brett holds the other filled Judgeship.

Each District Judge is authorized one Secretary and two Law Clerks who are assigned directly to the judge. In addition to this current staffing, an additional shared Law Clerk is authorized for the Northern District.

In addition to the support personnel assigned directly to the judges, three court reporters are assigned, one to the staff of each District Court Judge.

b. Magistrate Judgeships

Two Magistrate Judges are authorized by the Judicial Conference, with Judge John Leo Wagner and Judge Jeffrey S. Wolfe currently holding these positions. Each Magistrate Judge is authorized one Secretary and one Law Clerk.

2. Office of the Clerk of Court

The Clerk of Court, Richard M. Lawrence, joined the Court on September 3, 1991, replacing Jack Silver who retired after 23 years of service. Prior to joining the Northern District of Oklahoma, Mr. Lawrence had served for nine years as the Chief Deputy Clerk in the District of New Mexico. The Chief Deputy Clerk of Court is Mark C. McCartt. Mr. McCartt joined the Court on January 27, 1992, replacing Helen Miller who retired after 24 years of service. Prior to joining the Northern District of Oklahoma, Mr. McCartt was the Deputy Clerk in charge of the Reno Division of the United States District Court of Nevada.

The Clerk's Staff is divided between Courtroom Operations and Office Operations. The Courtroom Operations staff consists of five Deputies:

3	Courtroom Deputies
2	Magistrate Judge Clerks

The Office Operations staff consists of thirteen Clerks, Officers, and Specialists:

	Operations		Administration
3	Docket Clerks	2	Automation Specialists*
2	Intake Clerks	1	Financial Officer
1	Appeals Docket Clerk	1	Procurement Officer
1	Case Control Officer	1	Jury Clerk
		1	Records/File Clerk

* The Case Control Officer positions were converted to the Automation Specialist positions when the current automated case tracking system was implemented. Following the introduction of the ICMS System, the staffing of the Office Operations Group will be reviewed and changes will be implemented to accommodate the new technology. It is anticipated that the installation of this system will greatly enhance the Court's ability to manage the docket.

3. Facilities

The United States District Court and the Office of the Clerk of Court are located on the fourth floor of the United States Post Office, 333 West Fourth Street, Tulsa, Oklahoma 74103. The Court has five courtrooms. The Office of a Circuit Court Judge and the Law Library are also on the fourth floor.

The Magistrate Judges are located on the third floor of the same building. Each judge has his own courtroom. The United States Attorney's Office is also located on the third floor.

The United States Bankruptcy Court for the Northern District of Oklahoma is currently located on the second, third and ninth floors of the Grantson Building, 111 West Fifth Street, several blocks from the United States District Court. The Bankruptcy Court has two courtrooms, one for each judge, a Court Clerk's Office and an Assistant United States Trustee's Office.

4. Automation

Prior to September 28, 1992, the Clerk's Office had been using a docket tracking and case management system which was specifically designed and developed for the Tenth Circuit. This system came on-line on January 1, 1990. All prior records are maintained through manual tracking methods.

The civil automation in the Clerk's Office [Integrated Case Management System (ICMS) CIVIL/CRIMINAL] came on line on September 28, 1992. The staff assignments in the Clerk's Office have changed as the new civil system became operational. [In addition to ICMS - CIVIL/CRIMINAL, the other ICMS case management applications developed by the Federal Judicial Center are AIMS (federal appellate) and BANCAP (bankruptcy).]

CIVIL/CRIMINAL is an electronic docketing and case management system that supports a variety of case processing and management functions in the District Court. CIVIL/CRIMINAL provides the following capabilities for processing both civil and criminal cases:

- Automates maintenance of the case record and defendant record.
- Produces the docket sheet.
- Provides case status, document, and deadline tracking.
- Serves as a central, up-to-date information resource throughout the court and wherever a terminal is linked to the computer--in the clerk's office, judges' chambers, courtrooms, and public areas.
- Automates production of notices and other standard correspondence, case and party indexes, the JS-5 case

opening reports, the JS-6 case closing report; the JS-2 defendant opening report, and the JS-3 defendant closing report.

- Provides standard reports to assist judges and court administrators in monitoring case activity.
- Enables the courts to develop customized reports to address local information needs.

5. Adjunct Settlement Judges

In addition to the District Court Judges and the Magistrate Judges, a number of local attorneys (24) have been trained by the Court as settlement judges. Only attorneys with substantial settlement conference experience are selected by the judges. The training by a Magistrate Judge includes a one day seminar, written materials, and debriefings with a Magistrate Judge. Each adjunct settlement judge is assigned about one settlement conference a month which is held at either the courthouse or in the settlement judge's office. The assignment of an adjunct settlement judge is with the consent of the parties. Each adjunct settlement judge conducts the conference on a pro bono basis. In rare situations when the time required of the settlement judge will significantly exceed that normally required for a conference (e.g., in superfund litigation), the parties may consent to compensate the settlement judge.

B. Special Statutory Status, If Any

The Northern District of Oklahoma is neither a pilot court nor an early implementation district.

II. ASSESSMENT OF CONDITIONS IN THE NORTHERN DISTRICT

A. Condition of the Docket

In order to assess the condition of the docket for the Northern District of Oklahoma, the Advisory Group selected two separate methods of analysis. First, a review of the hard data currently available through traditional means, such as the Annual Report of the Administrative Office. Next, a Customer Opinion Survey was developed by the Advisory Committee. (See Appendices G & H.) The most frequent customers of the Court were mailed questionnaires, one for attorneys and one for litigants, and each was asked to provide his or her opinion. The list of attorneys and litigants who received these surveys was developed using the Court Dockets from January 1, 1990 to June 1, 1991. The docket database was queried to determine the attorneys who most frequently appeared before the Court, and one case in which they appeared as counsel was randomly selected. Additional cases were added as necessary to insure that the proportions of the various nature of suits was roughly maintained.

All the parties to the disputes selected in this manner were sent questionnaires--a total of 600 questionnaires were sent, half to the attorneys and half to the litigants. Approximately 100 surveys were returned by the attorneys and only 33 by the litigants. The attorneys' response was considered to be statistically significant for purposes of the Advisory Group; however, the litigant response was not. The data received from this survey was processed and a comprehensive statistical report was generated. (See Appendix I.)

The Tables and Charts below, represent the overall case volumes and weighted case volumes for the Northern District of Oklahoma from Statistical Year 1985 and 1992.

Table 1. Total Case Volume in the Northern District of Oklahoma, Statistical Years 1985-1992

Statistical Year	Filings	Terminations	Pending
1985	1246	1240	1037
1986	1346	1166	1217
1987	1296	1361	1151
1988	1417	1250	1318
1989	1790	1402	1705
1990	1274	1233	1730
1991	1139	1228	1611
1992	1248	1661	1161

Data extracted from Annual Report of the Administrative Office, 1985-92.

During five of this eight year period, the total number of cases filed has ranged from 1250 to 1350. The abnormal years were 1988 (1417), 1989 (1790), and 1991 (1139). The significant increase during 1988 can be traced to an increase in the filings of the asbestos and land condemnation cases. The significant increase during 1989 can be traced to asbestos case filings.

During six years of this eight year period, the total number of cases terminated has been in the 1150 to 1350 range. The abnormal years were 1989 (1402) and 1992 (1661).

During five years of this eight year period, the total number of cases pending has been in the 1050 to 1300 range. The three abnormal years were 1989 (1705), 1990 (1730), and 1991 (1611).

Table 2. Weighted Case Volume Per Judgeship--All Cases in the Northern District of Oklahoma, Statistical Years 1980-1992*

Statistical Year	Trials	Weighted Filings	Terminations	Cases over 3 Years Old
1980	45	289	331	60
1981	47	306	303	61
1982	55	355	459	64
1983	63	493	489	54
1984	75	538	525	60
1985	78	575	517	51
1986	71	592	486	55
1987	61	584	567	53
1988	45	619	521	61
1989	53	854	584	59
1990	53	482	462	50
1991**	33	312	335	105
1992**	35	347	453	31

Data extracted from Annual Report of the Administrative Office, 1985-92.

* The weighted caseload statistics provided by the Administrative Office are not considered by the committee to be representative of the actual workload of the court. This is due to the fact that the nominal weighting attributed to each case by case type does not reflect the comparative weighting of the District's caseload mix. Contributing to this perception is the fact that no adjustments are made to account for the time spent by Judge Cook while assigned roving cases in the Eastern District of Oklahoma.

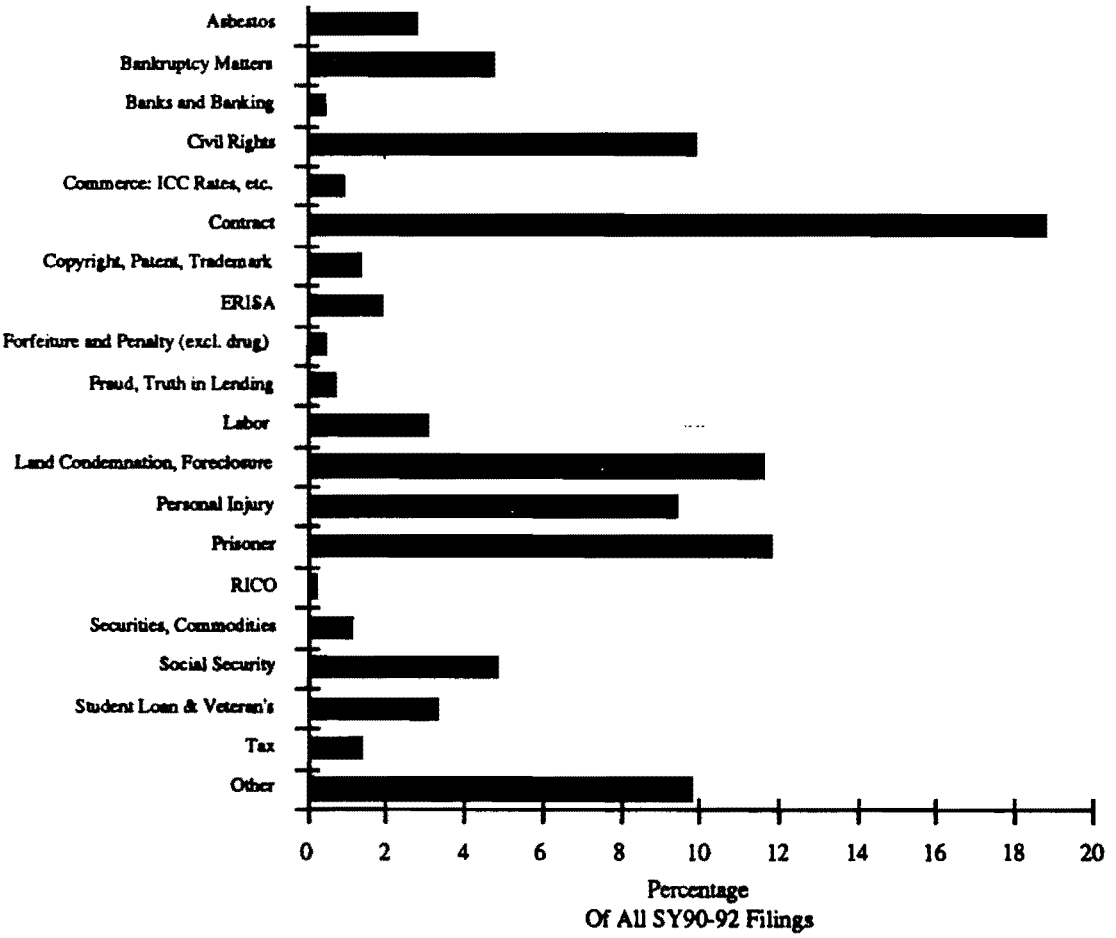
** The District received an additional judgeship as a result of recent legislation (28 U.S.C. § 133 (1992)). While this judgeship is factored into the statistics thereby lowering the per judge activity, the position has been vacant and is still unfilled.

1. Civil Docket

a. Caseload Mix and Filing Trends

Chart 1 shows the percentage distribution among types of civil cases filed in the Northern District of Oklahoma between statistical years 1990 and 1992.

Chart 1. Distribution of Case Filings for the Northern District of Oklahoma, Statistical Years 1990-1992



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, page 11 (September 1992).

Table 3 shows filings by case types for the past ten years (statistical years 1983-1992).

Table 3. Filings by Case Types for the Northern District of Oklahoma, Statistical Years 1983-1992

	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	0	2	0	0	16	76	468	47	18	28
Bankruptcy Matters	16	24	30	36	40	44	60	49	51	55
Banks and Banking	0	1	1	1	2	6	5	11	1	4
Civil Rights	67	101	100	89	94	97	99	98	82	140
Commerce: ICC Rates, etc.	6	1	2	3	4	6	3	12	3	17
Contract	313	313	359	337	341	303	333	246	189	171
Copyright, Patent, Trademark	16	15	16	27	16	9	17	14	17	14
ERISA	5	10	5	13	7	10	27	18	22	24
Forfeiture and Penalty (excl. drug)	10	10	6	20	21	9	23	10	6	1
Fraud, Truth in Lending	7	9	8	18	12	9	20	13	6	4
Labor	18	23	23	43	31	37	34	39	27	35
Land Condemnation, Foreclosure	47	40	51	65	61	141	99	134	137	105
Personal Injury	114	113	152	142	114	117	103	105	113	86
Prisoner	76	77	53	73	87	97	92	107	115	159
RICO	0	0	0	1	3	3	6	3	3	3
Securities, Commodities	26	28	33	28	15	22	17	11	13	13
Social Security	36	48	20	25	20	34	34	34	50	74
Student Loan and Veteran's	215	217	123	68	48	35	62	47	15	46
Tax	38	25	15	25	16	19	19	19	10	17
All Other	130	86	97	179	136	128	113	113	98	105
All Civil Cases	1140	1143	1094	1193	1084	1202	1634	1130	976	1101

Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, page 12 (September 1992).

Over the past ten years, contract cases have consistently been those most frequently filed in the District. From 1983 through 1989, contract cases ranged from 303 to 341 filings and represented between 25 to 32% of all civil filings. For the past three years, however, the number of contract cases filed has declined (1990--246 cases or 22%; 1991--189 cases or 19%; 1992--171 cases or 16%).

In 1989, a large group of asbestos cases were filed (468 cases or 28.6% of the total filings for the year). This compares to only 18 asbestos cases filed between 1983 and 1987. This bubble disproportionately increased the total filings for asbestos cases during this ten year period. (Compare the 468 cases filed in 1989 with the 655 asbestos cases that were filed during this entire ten year period.)

For the first nine years of this ten year period, personal injury cases have maintained a fairly stable level and were the second, third, or fourth most frequent filing. Student Loans & Veteran's was the second most frequent filing in 1983 and 1984, Land Condemnation the second most frequent filing in 1988,

Asbestos the second most frequent filing in 1989, and Land Condemnation the second most frequent filing in 1990 and 1991. Prisoner petitions were the third most frequent filing in 1990 and 1991. In 1992, personal injury cases fell to fifth, behind contract, prisoner petitions, civil rights, and land condemnation. Personal injury cases fell from about 10% of the annual filings to 7%.

Civil rights cases consistently represented about 8% of the filings and has been the third, fourth or fifth case most often filed. In 1991, civil rights cases surged to almost 13% of the cases filed. The number of civil rights cases jumped from 100 to 140.

Prisoner petitions and land condemnation/foreclosures have experienced an increase since 1989, placing them in the top four cases most often filed.

The Administrative Office classifies civil cases into Type I and Type II. Type I, which collectively accounts for about 40% of national civil filings over the past ten years, includes the following case types:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases.

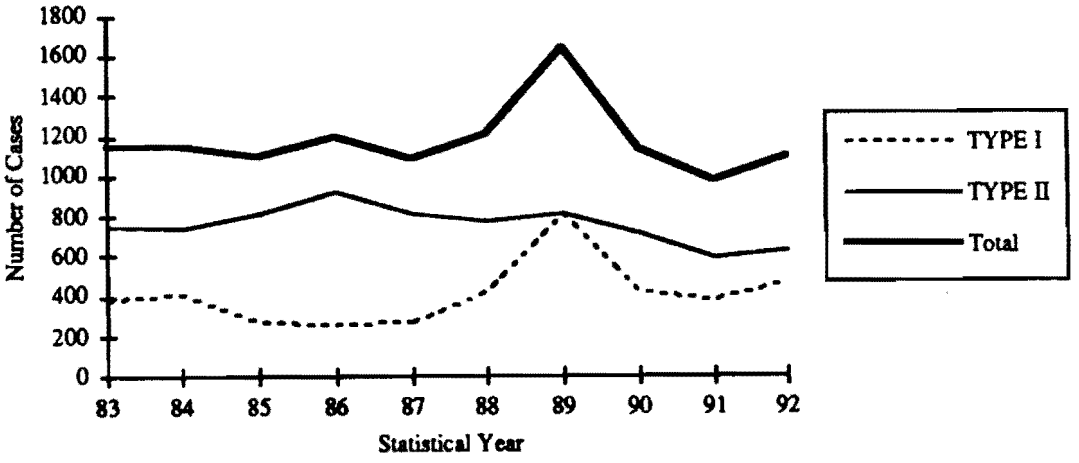
Type II, which collectively account for about 60% of national civil filings over the past ten years, includes the remainder of the case types. Type II cases include:

- contract actions other than student loan, veterans' benefits, and collection of judgment
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases
- securities cases
- other actions under federal statutes (e.g., FOIA, FICO, and banking laws)

Type I cases are distinctive because within each case type the vast majority of cases are handled the same way. For example, most Social Security cases are disposed of by summary judgment. Type II cases, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition. For example, one contract action may settle, another go to trial, and another end in summary judgment.

Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories of cases in the Northern District of Oklahoma.

Chart 2. Filings by Board Category for the Northern District of Oklahoma, Statistical Years 1983-1992



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, page 12 (September 1992).

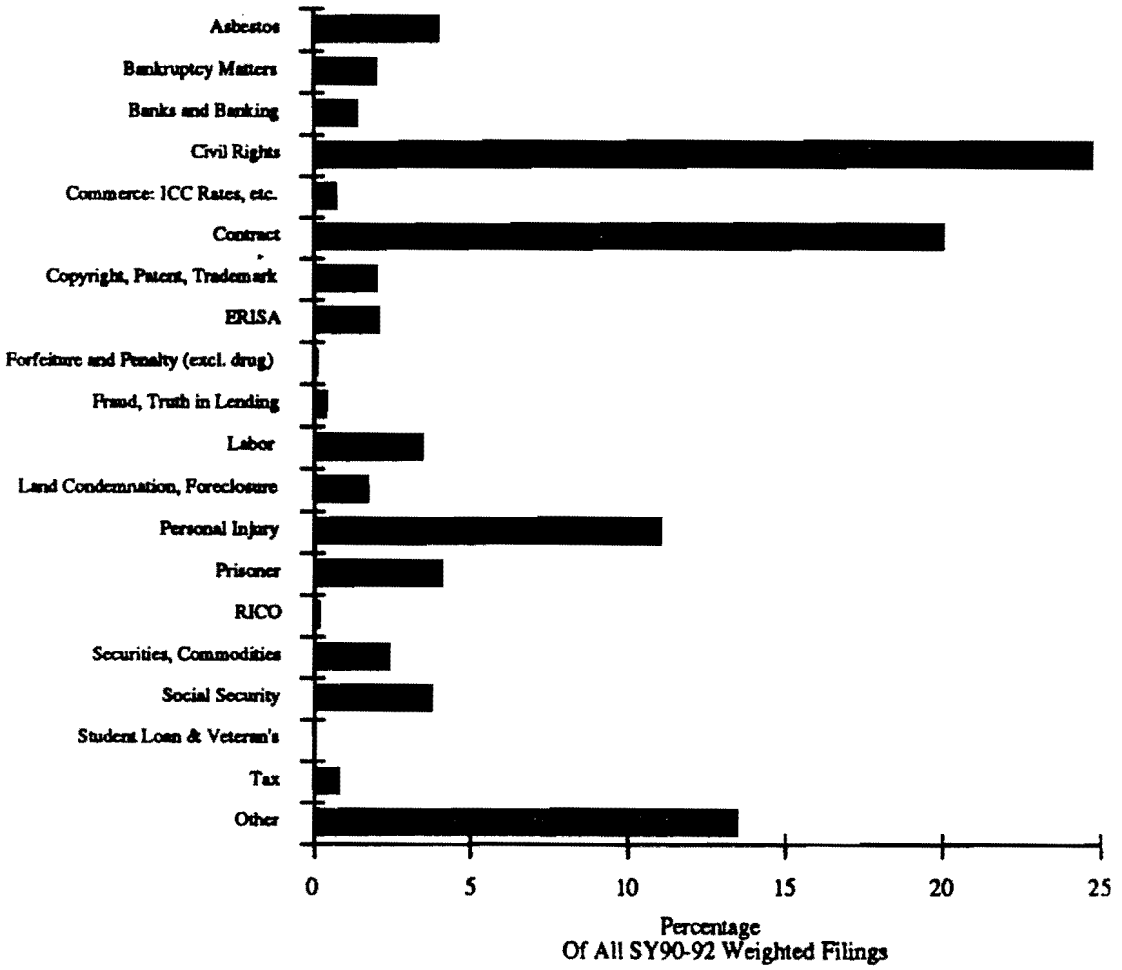
b. Burden

While the total number of cases filed is important, the total number of cases filed does not provide significant information concerning the work these cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases.

Chart 3 weights the cases to show the approximate distribution of demands on judge time among the case types filed in the Northern District of Oklahoma during the last three years (statistical years 1990-1992). Chart 3 does not reflect the time demands placed on the Magistrate Judges.

Over the 1990-1992 period, the Judges in the Northern District attributed approximately 62% of their time spent in trial to civil cases.

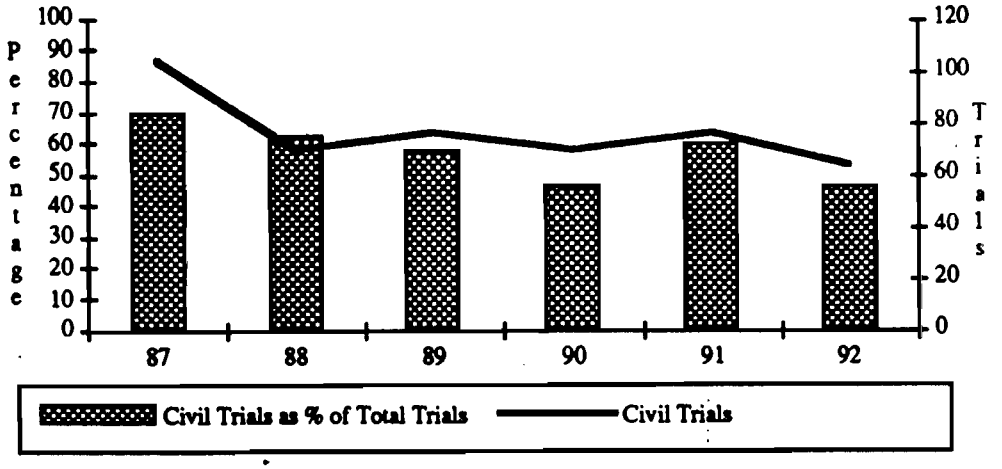
Chart 3. Distribution of Weighted Civil Case Filings in the Northern District of Oklahoma, Statistical Years 1990-1990



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, page 13 (September 1992).

Another indicator of the burden on the judges is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years in the Northern District of Oklahoma.

Chart 4. Number of Civil Trials and Civil Trials as a Percentage of Total Trials for the Northern District of Oklahoma, Statistical Years 1987-1992



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, page 13 (September 1992).

c. Time to Disposition

Charts 5 and 6 show the life expectancy and indexed average lifespan (IAL) for cases in the Northern District of Oklahoma during the ten year period between 1983 and 1992. Chart 5 deals with all civil cases during this period. Chart 6 deals only with Type II civil cases during this period.

Life Expectancy answers the question "How long is a case likely to exist from filing to disposition?" Indexed Average Lifespan (IAL) permits comparison of the characteristic lifespan of the cases in the Northern District of Oklahoma to the cases in all district courts over the past ten years. The national IAL is indexed at a value of 12 because the national average time between filing and disposition is about 12 months. This national average time is depicted as the IAL Reference and is indicated on Charts 5 and 6 at 12 months. Values below the IAL Reference (12 months) indicate that the court has disposed of its cases faster than the national average. Values above the IAL Reference indicate that the court has disposed of its cases more slowly than the national average.

Life Expectancy and IAL serve different purposes. Life Expectancy is used to assess change in the trend of actual case lifespan. It is a timeless measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts. It is corrected for changes in the case mix but not for changes in the filing rate.

Since 1983, the Northern District of Oklahoma has consistently maintained an Indexed Average Lifespan (IAL) of cases at or below the 12 month IAL Reference.

Chart 5. Life Expectancy and Indexed Average Lifespan for the Northern District of Oklahoma, All Civil Cases, Statistical Years 1983-1992

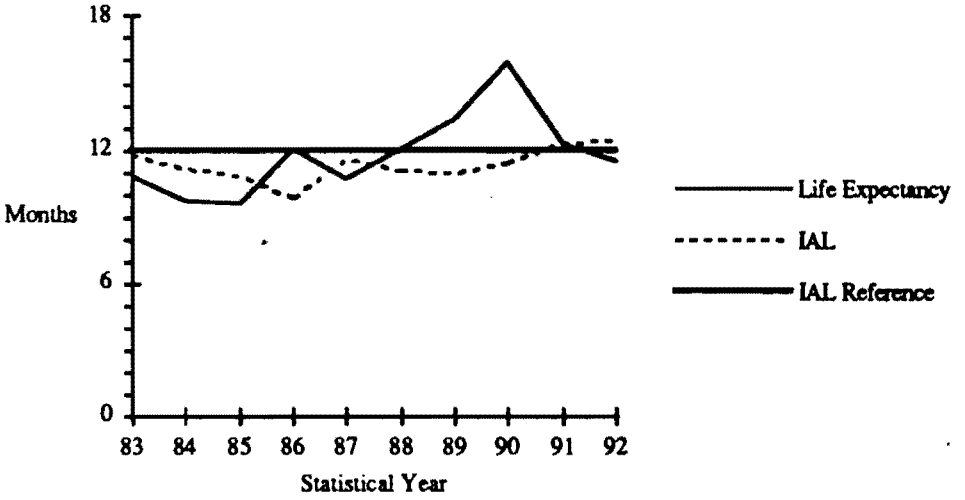
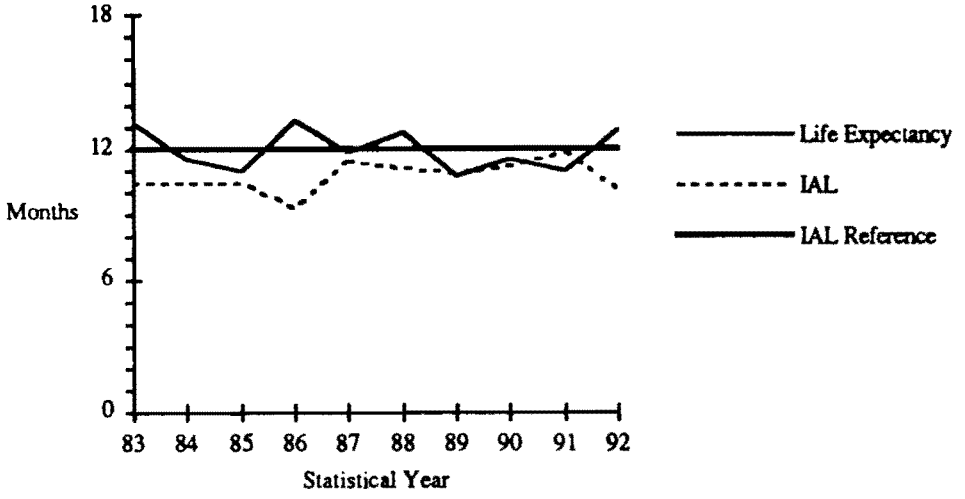


Chart 6. Life Expectancy and Indexed Average Lifespan for the Northern District of Oklahoma, Type II Civil Cases, Statistical Years 1983-1992



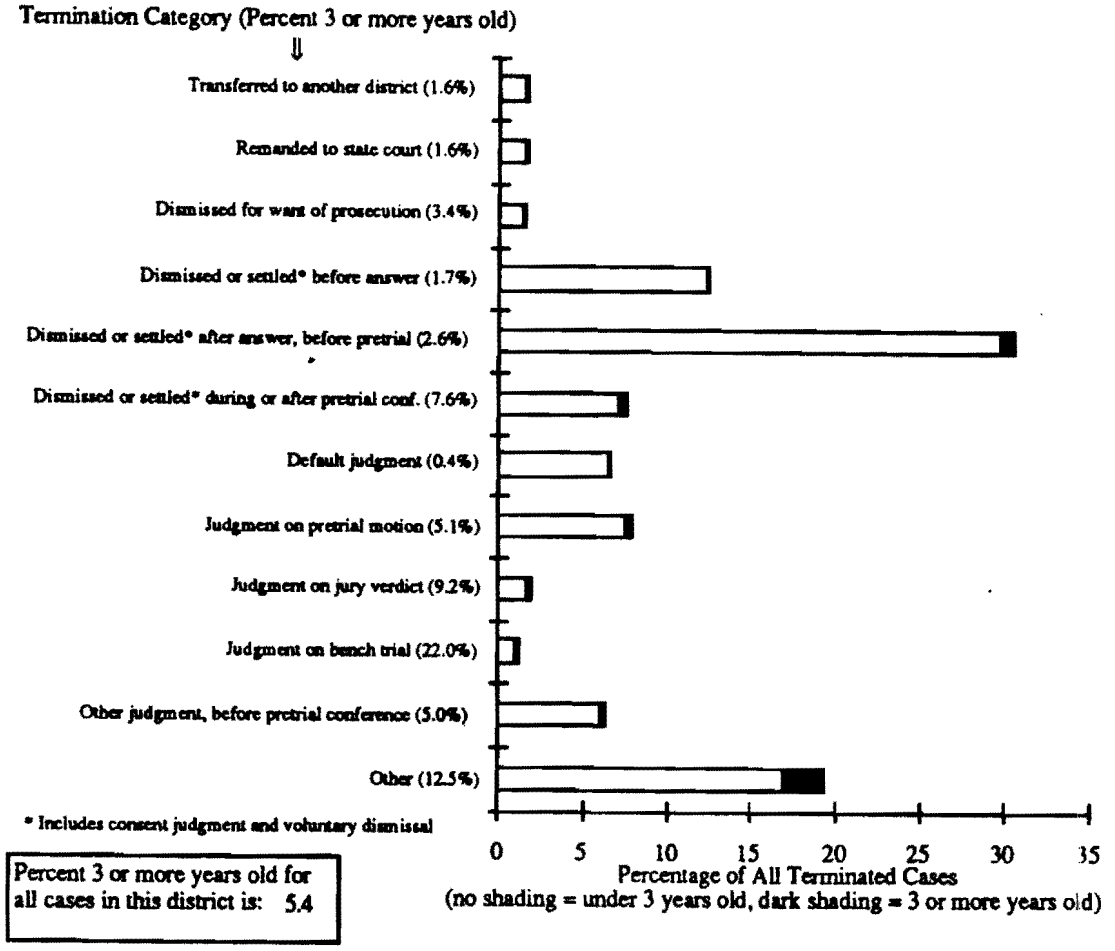
Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistic Supplement, page 15 (September 1992).

These statistics seem to confirm the overall result of the Opinion Survey responses regarding the speed of litigation in the Northern District of Oklahoma. In general, attorneys viewed the speed of litigation in the Northern District of Oklahoma as about the same as in other districts; however, both attorneys and litigants expressed some dissatisfaction with the overall speed of litigation from filing to disposition. The primary source of the dissatisfaction seemed to be the length of time required for rulings on dispositive motions and excessive discovery.

d. Three-year-old Cases

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

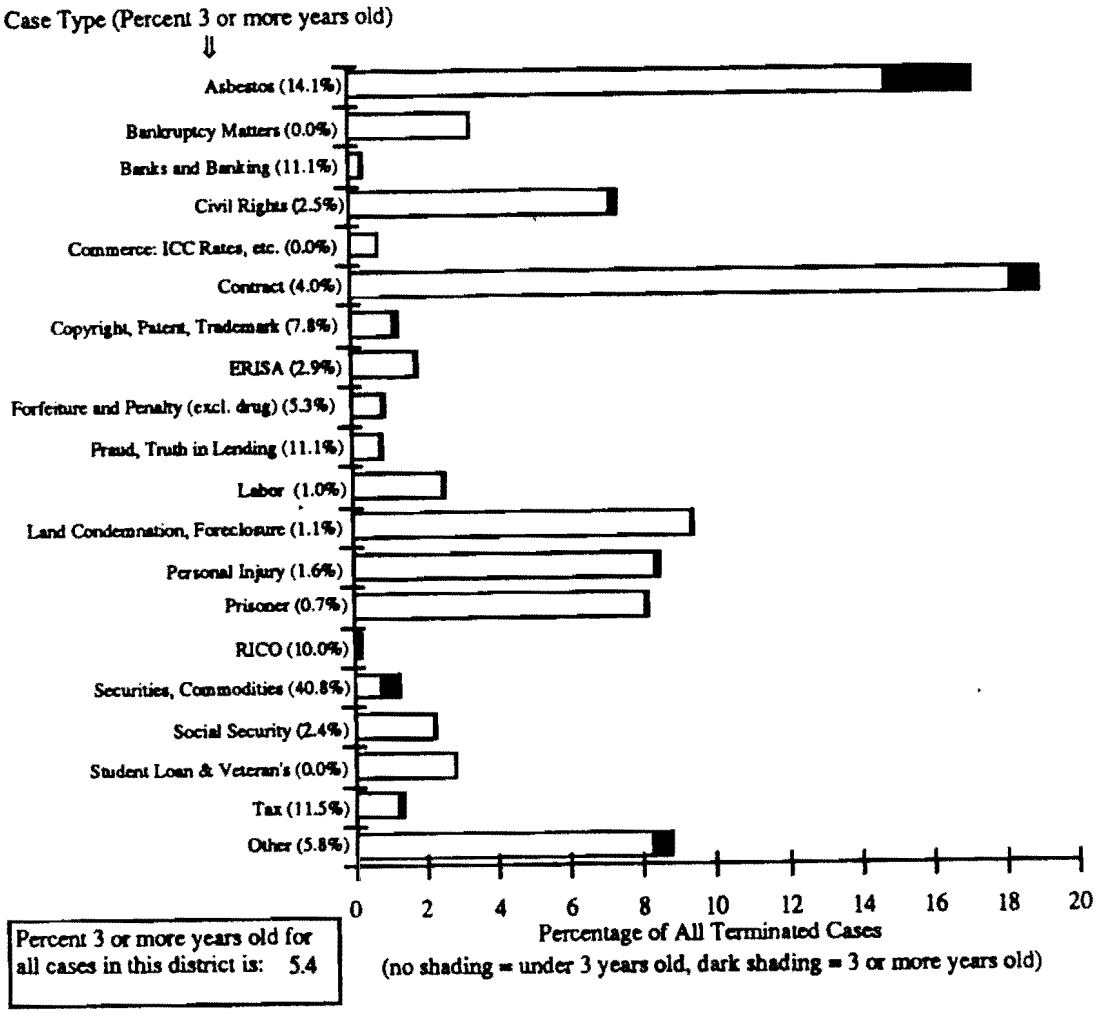
Chart 7. Cases Terminated in the Northern District of Oklahoma in Statistical Years 1989-1991, By Termination Category and Age



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistic Supplement, page 16 (September 1992).

Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8. Cases Terminated in the Northern District of Oklahoma in Statistical Years 1990-1992, By Case Type and Age



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistic Supplement, page 17 (September 1992).

2. Criminal Docket

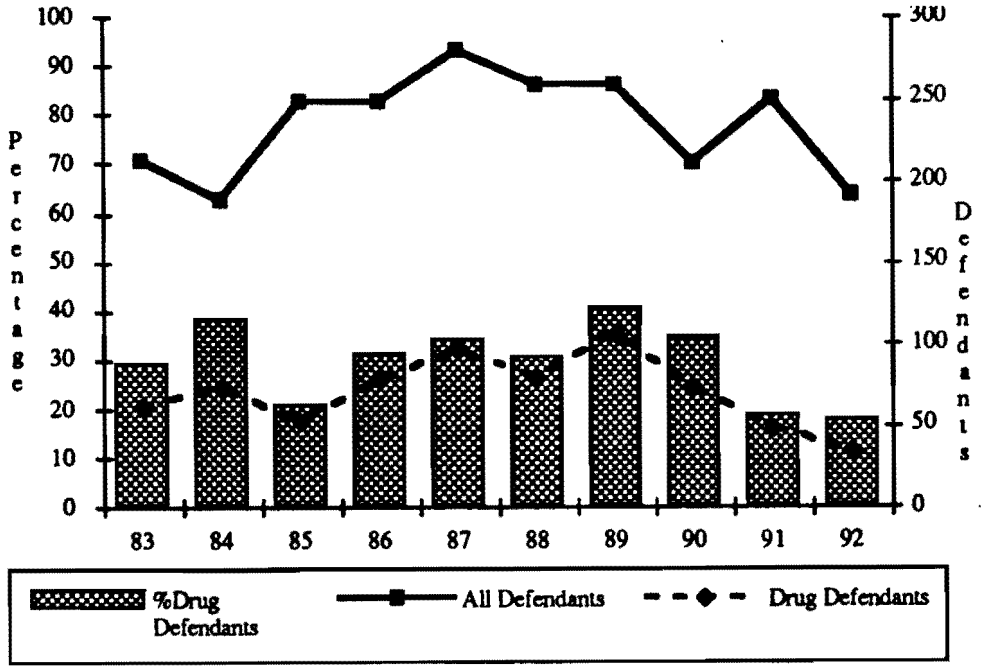
a. Impact of Criminal Prosecutions

The criminal caseload limits the resources available for the court's civil caseload. The Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for the Northern District of Oklahoma is shown in Chart 9. Criminal defendants are counted rather than cases because a Federal Judicial Center district court time study indicates that the burden of a criminal case is proportional to the number of defendants. Chart 9 also shows the number and percentage of defendants in drug cases.

Criminal defendant filings from 1983 to 1992 in the Northern District of Oklahoma reached a high of about 280 in 1987 and has since decreased to slightly below 200 in 1992. The number of drug defendant reached a high in 1989 and has since decreased to its lowest number during this ten year period.

Chart 9. Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants in the Northern District of Oklahoma, Statistical Years 1983-1992

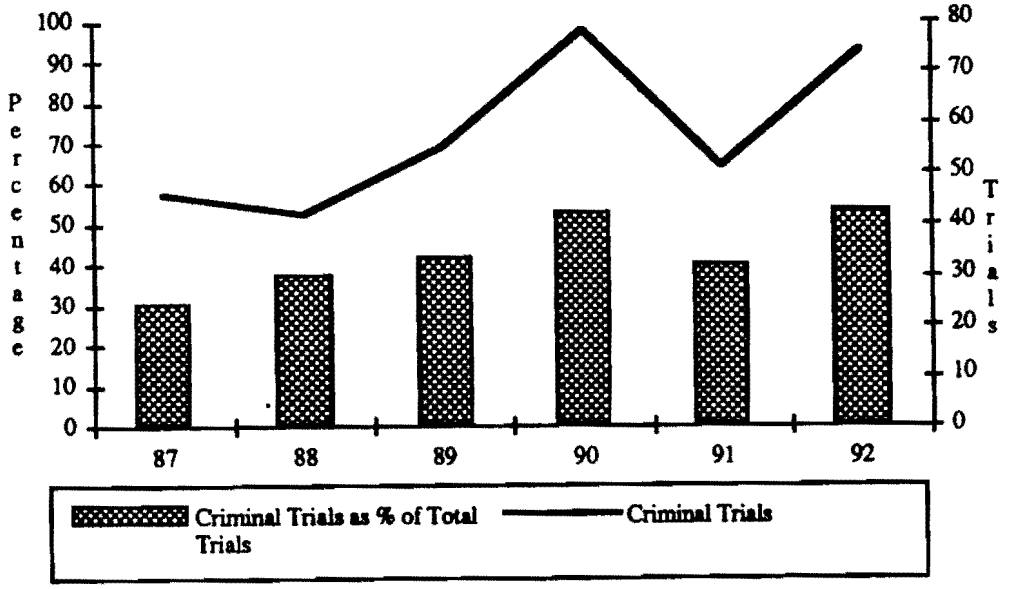


Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistic Supplement, page 18 (September 1992).

b. Demand on Resources by Criminal Trials

Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10. Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials in the Northern District of Oklahoma, Statistical Years 1986-1991



Taken from Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY92 Statistic Supplement, page 18 (September 1992).

During the period from 1985 to 1992, the criminal docket of the Northern District of Oklahoma made up only an average of 11.63% of all cases filed in the District. Although data regarding the actual time spent by judges at trial was not available for a like period, the judges of the District did report spending 38.6% of their total time at trial on criminal cases for the period from 1990 to 1991.

Table 4 shows the relationship between Criminal and Civil filings in the Northern District of Oklahoma.

Table 4. Comparison of Filings, Civil vs. Criminal, in the Northern District of Oklahoma, Statistical Years 1985-1992*

Statistical Year	Criminal Filings	Civil Filings	Total Filings	% of Criminal vs. Total
1985	151	1092	1243	12.15%
1986	159	1185	1344	11.83%
1987	189	1101	1290	14.65%
1988	185	1246	1411	11.69%
1989	140	1643	1783	7.85%
1990	132	1136	1268	10.41%
1991	150	989	1136	13.20%
1992	141	1107	1248	11.29%

Data extracted from Annual Report of the Administrative Office, 1985-92.

3. Trends in Case Filings and Demands Being Placed on Court Resources

a. Trends in Case Filings

Table 3 (page 18) shows the average number of civil cases filed during the years 1983 through 1992 to be 1170 and the median number of civil cases filed 1135.

Highest number of civil cases filed	1634 (1989)
Median number of civil cases filed	1135
Average number of civil cases filed	1170
Lowest number of civil cases filed	976 (1991)

Except for 1989 and 1991, the number of civil cases filed was in the 1080 to 1200 range.

Chart 2 (page 20) shows the trend of case filings over the past ten years for Type I and Type II categories as defined by the Administrative Office. Table 3 (page 18) lists the case filings, by type, from 1983 to 1992. A review of this data reveals that the Northern District of Oklahoma experienced a significant increase in the number of Asbestos cases filed from 1988 through 1990. As a consequence of these filings, the Court developed an administrative method for expediting the handling of these cases. This matter was ultimately resolved when these cases were transferred by national order to Pennsylvania for adjudication. If these cases should return to the Northern District, they would instantly constitute a 50% increase in the annual filings and would place a heavy burden on judicial resources. It is a tribute to the dedication of the staff in the Northern District of Oklahoma that the addition of over 400 cases in one year (1989) did not significantly disrupt the judicial process or disposition times.

A comparison of the 19 types of civil filings in 1983 (1140) and the civil filings in 1992 (1101) indicates that nine types of civil case filings have increased: asbestos (0 to 28); bankruptcy matters (16 to 55); civil rights (67 to 140); commerce: including ICC rates (6 to 17); ERISA (5 to 24); labor (18 to 35); land condemnation/foreclosure (47 to 105); prisoner (76 to 159); and social security (36 to 74). Seven types of case filings have decreased: contract (313 to 171); forfeiture and penalty (excluding drug) (10 to 1); fraud/truth in lending (7 to 4); personal injury (114 to 86); securities/commodities (26 to 13); student loan & veteran's (215 to 46); and tax (38 to 17). Three types of case filings have either an insignificant number of filings or have remained almost unchanged: banks and banking (0 to 4); copyright/patent/trademark (16 to 14); and RICO (0 to 3).

Of the nine types of civil case filings that have increased between 1983 and 1992, five were Type I civil cases: asbestos (0 to 28); bankruptcy matters (16 to 55); land condemnation/foreclosure (47 to 105); prisoner (76 to 159); and social security (36 to 74). Only one Type I civil case, student loan and veteran's (215 to 46), decreased. With 390 Type I cases filed in 1983 and 467 Type I cases filed in 1992, the net increase in Type I cases was 77 (20%). With 750 Type II civil cases filed in 1983 and 634 Type II cases filed in 1992, the net decrease in Type II cases was 116 (15%).

b. Demands Being Placed on Court Resources

Since Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way (e.g., most Social Security cases are disposed of by summary judgment) and Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition (e.g., one contact action may settle, another may be disposed of by summary judgment, and a third may go to trial), it would seem that the increase in Type I cases and the decrease in Type II cases should, in theory, lighten the demands being placed on court resources.

During the period of 1983 through 1992, the number of Magistrate Judges increased from one to two and their role, vis-a-vis the District Court Judges, changed. The Magistrate Judges were delegated a significant role in pre-trial process, including the basic responsibilities for status and scheduling conferences, settlement conferences and discovery dispute resolution.

Although for most of the period between 1983 through 1992 the District Court of the Northern District of Oklahoma remained at three judges (although the Chief Judge roved between the Northern and Eastern Districts of Oklahoma so the official count is less than three), the workload for two of the judges increased significantly when the Chief Judge took senior status on January 1, 1992. While a fourth judge was authorized for the Northern District of Oklahoma and a person was nominated for this new position and another person was nominated to replace the former Chief Judge, neither completed the confirmation process prior to the Congressional recess in October 1992. Therefore, beginning in 1992 the Northern District of Oklahoma functions with two District Court Judges (one being elevated to Chief Judge) and a senior judge who continued to rove between the Northern and Eastern Districts of Oklahoma and who limited his new cases to the criminal filings.

Naturally, the Sentencing Guidelines in Criminal Trials and other aspects of the criminal docket have increased the time devoted to the criminal docket and therefore has resulted in less available time for the civil docket.

4. Trends in Court Resources

During the ten year period between 1983 and 1992, the number of Magistrate Judges has increased from one to two and the number of District Court Judges has decreased from three (with the Chief Judge roving between the Northern and Eastern Districts of Oklahoma) to two (plus a senior judge who continues to rove between the Northern and Eastern Districts of Oklahoma). Although a replacement for the judge who has taken senior status has been authorized and an additional judgeship authorized, neither has been filled as of the time Congress adjourned in October 1992.

B. Cost and Delay: Principal Causes of Excessive Cost and Delay in Civil Litigation in the Northern District of Oklahoma

The results of the Opinion Survey indicate that the parties and attorneys involved in litigation in the Northern District of Oklahoma believe that improvements can be made to reduce the cost and delay of litigation in this District. Although the suggestions received from the respondents for improvement of the system range from filing to the final disposition of a case, there were some common causes and suggestions that will be discussed below. Additionally, the Advisory Group has identified causes and made recommendations for improvements, independent of the statistical analysis, that will be discussed in the "Recommendations" section.

1. Effect of the Types of Cases Filed in the District on Cost and Delay

The mix of civil cases filed from year to year has remained relatively stable with a few exceptions. In 1988 the number of land condemnation/foreclosure cases increased 131% (61 to 141), in 1989 the number of asbestos cases increased 516% (76 to 468), and in 1992 the number of prisoner cases increased 38% (115 to 159) and the number of civil rights cases increased 71% (82 to 140). Although all but the civil rights cases are Type I cases, the dramatic increase in the number of asbestos cases filed had a serious impact on the Court until they were transferred to the Eastern District of Pennsylvania for adjudication. The increase of asbestos cases filed contributed to a 36% increase in the total civil case filings for 1989.

2. Impact of Court Procedure and Rules on Cost and Delay

a. Case Scheduling Practices

A number of comments and suggestions regarding the scheduling system were received. Overall, the comments were critical of the priority status criminal cases are given. Attorneys cite instances where, although scheduled and ready for trial, cases are postponed due to the criminal trials which are intermingled with the civil cases. The net effect is a delay in the disposition of the civil case and additional costs to the parties due to the professional fees for witnesses and attorneys scheduled but not used.

Suggestions for improvement included the assignment of one judge for criminal proceedings only. Also suggested was a local rule which provides for a binding trial in front of a magistrate judge. Under this suggestion, the parties would consent to trial with the understanding that they could not appeal the magistrate judge's ruling to the district judge. This would effectively increase the number of judicial officers available to hear civil cases.

b. Motion Practice

Motion practice in the Northern District of Oklahoma is perceived to be excessive by some respondents to the survey. They cite examples of unnecessary/questionable/dilatory/frivolous motions that serve to delay the disposition of the cases and drive up litigation costs.

The most pervasive theme running through interviews with attorneys is their frustration with the delays in receiving rulings on motions. Sometimes a ruling on a dispositive motion, such as a motion for summary judgment, will be made close to trial. By this time the attorneys have completed discovery and are prepared for trial on all of the issues of the case. During the time when the motion was pending, the costs for discovery and for attorney preparation for trial have continued. The attorneys responding indicated that more rapid rulings on dispositive motions would eliminate unnecessary discovery costs and attorneys fees while reducing the overall time required for final disposition of the lawsuit.

Comments received from a number of respondents indicated that there is a strong desire to reinstate a motions docket to reduce both cost and delay in the Northern District of Oklahoma.

c. Jury Utilization

Jury utilization does not appear to play a role in cost or delay in the Northern District of Oklahoma. The court clerk's office successfully balances the number of jurors called for service with the number of cases on for trial. Trials are not delayed awaiting jurors. Jurors' surveys indicated that jurors appreciated the efficient telephone call-in line so they could determine the status of their case, the reasons for delays during trial, and the opportunity for an off day to conduct personal business during long trials. Jurors report they feel well-utilized.

d. Alternative Dispute Resolution Procedures

The consensus of respondents is that the current ADR measures in the Northern District, contribute significantly to reduce costs and expedite disposition of cases. Most comments recommended an expansion of the existing program to provide additional types of ADR, as well as expanded use of the services currently in use.

3. Effect of Court Resources on Cost and Delay

a. Numbers of Judicial Officers

The delays in ruling on motions for summary judgment may only be a short term problem. Since the early 1980s, the Northern District operated with 2.4 full-time District Court Judges. In 1991, a fourth judge was approved and although the judge has been nominated, the nominee waited for a confirmation hearing which was never held due to the pending Presidential

elections. Now that the elections have been held and a new administration will control the Presidency, it is uncertain whether the process of nomination will begin anew. When confirmed, this judge will be a roving judge in the Eastern and Northern Districts (⅔ Northern; ⅓ Eastern). As of January 1, 1992, the presiding judge took senior status. Therefore, the Court currently has 2 sitting judges. Once the Court has its full compliment of judges, 3.67, the backlog of dispositive motions and new dispositive motions can be addressed. Therefore, the more critical problem is the interim until the Court has its full compliment of judges.

b. Comment on Judicial Vacancies

The survey of the Court's customers was conducted prior to Judge Cook accepting senior status on January 1, 1992. At that time, only one authorized judgeship had not been filled, and the process of filling that particular vacancy seemed at that time to be progressing quickly. Since that time, however, neither that vacancy nor the vacancy created by Judge Cook's senior status has been filled.

Table 5. Judicial Vacancies for the Northern District of Oklahoma, Statistical Years 1987-1992

	Twelve Month Period Ending June 30					
	1987	1988	1989	1990	1991	1992
Number of Judgeships	2.40	2.40	2.40	2.67	3.67	3.67
Vacant Judgeship Months	.00	.00	.00	.00	7.00	18.00

The shortfall in judicial officers will be reflected in the Court's ability to keep up with the caseload as it has in years past.

c. Method of Using Magistrate Judges

Magistrate Judges are seen to be very effective and well-utilized in resolving discovery disputes, administrating complex cases, and settlement conferences. Their efforts have saved the District Court Judges and the parties significant time and expense. The Magistrate Judges could, however, save the judges and litigants additional time and expense if they were able to increase the number of trials that they conduct. At the present time, the Magistrate Judges conduct few trials. Incentives are suggested later in this report to encourage parties to accept a Magistrate Judge trial. Appellate considerations also limit consensual dispositive motion rulings by Magistrate Judges. A rule change will be suggested later in this report to permit the direct appeal of a Magistrate Judge's ruling on a dispositive motion directly to the Court of Appeals.

d. Court Facilities

The court facilities appear adequate for their current use. A recent renovation of the courthouse added two courtrooms. The courtrooms, however, have not been on the cutting edge of modern technology and therefore cannot offer the litigants the savings of time and costs that this technology may have to offer. Recently, each courtroom has been equipped with a computer so the courtroom deputy can access the data base kept in the court clerk's office. Many advances in the use of electronics during trial, necessitate the availability and updating of equipment in the courtrooms so trials can be conducted as efficiently as possible. The installation of audio visual presentation equipment would enhance and expedite the presentation of trials. To make such installations in this older building may require a redesign of the Court's facilities. It is suggested that each Judge and the Court Clerk continue to consider how best to implement developing technology for individual courtrooms.

e. Court Staff

The recent addition of the ICMS system has greatly enhanced the capabilities of the Clerk's clerical staff in the management of cases. As the staff becomes more familiar with the system, the capabilities will continue to increase, thus saving significant court and attorney time and expense. The Clerk's Office currently has a system's manager and a system's administrator. The latter is a temporary position and expires December 31, 1992. Without a system's administrator, attorneys' access to court records will be diminished thus increasing costs and delays for the judges and the litigants. Without the system's administrator, the efforts of the Clerk's Office will be focused more on maintaining current skills and services rather than augmenting services such as communication and dial-in activities.

This report will discuss the shifting of the responsibility of the administration of the Adjunct Settlement Judge Program from the office of one of the Magistrate Judges to the Court Clerk's Office. This shift will institutionalize the program, free the Magistrate Judge from clerical duties, and permit the Magistrate Judge to try additional cases, thus saving the court and the litigants time and expense. This shift, however, will require an additional clerk on the Clerk's staff.

f. Automation

Some attorneys responding to the survey were critical of the lack of automation in the Clerk's Office. Several suggestions were submitted, including the addition of a computer terminal at the Clerk's counter for use by attorneys. This would presumably relieve the Clerk's clerical staff of attorney requests for docket information on cases. Also suggested was an electronic filing system which would allow attorneys to file suits via computer rather than in person.

Since surveying the bar, the civil system in the ICMS--

CIVIL/CRIMINAL system has become operational (September 28, 1992). Once this system is fully operational (shortly after January 1, 1993) and attorneys are able to dial into the system from their offices, many of the problems with automation will be resolved.

4. Effect of the Practices of Litigants and Attorneys on the Cost and Pace of Litigation

a. Discovery

Many comments were received regarding excessive discovery practices which drive up the cost of litigation. These comments seemed more frequent from civil defense attorneys. The common complaint was that opposing counsel would ask for unnecessary discovery as a dilatory or settlement tactic.

b. Motion Practice

Dilatory motions are not favored by the attorneys who responded to the questionnaire or by the Court and do not appear to be a common practice in the Northern District of Oklahoma. Dispositive motions or partially dispositive motions do delay rather than expedite disposition of cases. This delay, however, is the inevitable consequence of the volume of the motions that must be dealt with by a Court that is almost 50% understaffed. When the vacant judicial positions are filled, the expectation is that this delay will disappear. The delay is not believed to be caused by either the Court or the practices of counsel.

c. Relationships Among Counsel

Conflict between counsel is conspicuously absent in the Northern District of Oklahoma. Some delay and increased costs appear to occur when counsel who are not well-versed in the local rules or the Federal Rules of Civil Procedure find themselves in this court because of a removal from state court. This is seen as an inevitable consequence of the differences between state and federal rules which has diminished and is expected to continue to diminish as state rules become more similar to their federal counterparts.

d. Role of the Clients (Client Involvement)

Client intervention is not seen as a problem in the Northern District of Oklahoma.

e. Pro Se Cases

Pro se parties do, however, place a substantial burden on the staffs of the Court and the Clerk. Pro se matters require a disproportionate amount of time and attention and result in delays for other matters.

The disposition of pro se inmate cases has been speeded up by the addition of a part-time law clerk. The pro se inmate

cases go directly to this law clerk and to the District Court Judge, thus bypassing the Magistrate Judge. This makes for an expedited disposition of these cases.

5. Extent To Which a Better Assessment of the Impact of Legislation and Executive Branch Actions Could Reduce Cost and Delay

a. Impact of Legislation on Cost and Delay

1) Civil Procedures

a) Expediting Service of Process

The proposed rules address expediting service of process. The impact of these proposed rules on cost and delay can be better assessed by a detailed study of the changes anticipated by each proposed rule on a district by district basis. A subcommittee of this CJRA Advisory Group could be appointed to conduct such a study.

b) Assessing the Need for Additional Resources

Every statutory and rule change has an impact on the resources necessary to implement such a change. Prior to any statutory or rule change, an impact statement should be mandated as a prerequisite to enactment and implementation.

2) Criminal Procedures

a) Mandatory Minimum Sentences

Mandatory minimum sentences, as a practical matter, rarely affects the time required by a judge in a criminal case in the Northern District of Oklahoma. For example, if a defendant is charged with two drug offenses, count one carrying a minimum mandatory of five years up to a maximum of 40 years in the penitentiary and count two carrying zero to 20 years, the first count will be dismissed and the defendant can plead to court two. Generally, under a standard guideline sentence calculation, the plea on count two will exceed the minimum of count one. So the fact that the count carrying a minimum mandatory sentence has been dismissed does not mean that the defendant will receive a sentence below the mandatory minimum sentence. Therefore, the existence of mandatory minimum sentences does not affect the resources consumed by the Court in criminal cases in the Northern District of Oklahoma.

b) Sentencing Guidelines

A number of judges have expressed an interest in having wider latitude with less paperwork. If a judge deviates below the guideline sentence, the judge must provide the rationale why he or she deviated from the established range. The time taken to

prepare the rationale adds cost and delay to the system.

Some respondents expressed concern that the Sentencing Guidelines in Criminal Trials created a secondary impact on civil matters, increasing costs and causing delays. They suggested that the new, guideline penalties increased the likelihood that criminal defendants would go to trial and take their chances in front of juries, rather than accept plea bargain arrangements.

Due to the challenges raised against the Guidelines, which caused their implementation to be staggered, no direct correlation could be established to validate this hypothesis. Several comparisons were conducted, using the criminal trial information for statistical years 1985 and 1986 (the last years the guidelines were not used), as compared to statistical years 1990 and 1991. Although the results of these comparisons indicate that in 1990 there was an increase in the number of criminal defendants opting for trial, the 1991 ratios are in keeping with the 1985 and 1986 proportions. This would suggest that during the initial implementation of the Guidelines, defendants were more likely to go to trial, but once the Guidelines had been in place and were no longer in contention, defendants accepted the plea bargain arrangements as before.

The 1992 statistics for the Northern District of Oklahoma, however, indicate a reversal of this trend. The 1992 statistics report that the number of criminal filings has dropped to its lowest level in recent years and yet the number of criminal trials as a percentage of total trials has increased substantially. This is due in part to the fact that the type of criminal case being filed has changed and will continue to change from time-to-time based on priorities and resources of various agencies of the federal government. For example, in 1990 the Northern District of Oklahoma had the second highest sentences of all judicial districts. Agencies that handle more minor cases had their resources cut, while additional resources were added to agencies that handle more significant cases, and the Department of Justice priorities changed. More serious and more complex cases reduce the number of filings, increase the time spent on each case, and tend to go to trial more frequently. They also dramatically increase the time required by judges for sentencing. It should be noted that in 1992, for the first time, all criminal defendants were subject to the Sentencing Guidelines.

The report prepared by the probation office is very extensive and must be provided to the parties ten days beforehand an evidentiary hearing on that report. If any aspects of the report are disputed, thus requiring a hearing, additional courtroom time is required prior to sentencing.

c) Use of Magistrate Judges

The role of the Magistrate Judge differs from district to district. Some Courts may limit the Magistrate Judge's role while others may attempt to expand the role. Prior to any statutory or rule change, an impact statement in relation to the Magistrate Judge should be mandated as a prerequisite to enactment and implementation. At a minimum, a brief impact report by a Magistrate Judge from each district should be

required.

d) Plea Bargaining

Guideline sentencing combined with current Department of Justice policy have decreased plea bargaining and therefore increased the number of criminal trials. Many defendants feel that with Guideline Sentencing, they might as well take a chance with a trial. As the number of criminal trials increase, the judicial time available for civil matters decreases thus creating delays and increasing costs.

b. Impact of Executive Branch Action on Cost and Delay

Political changes within the Executive Branch may have an impact on the ways in which the statutes and rules are enforced. The Executive Branch may also promote new legislation and rules. Shifts in policy, whether by rule or by policy, should be prefaced by an impact statement. Each district should have an opportunity to respond in writing to an appropriate authority prior to the point when executive branch action which would have an impact on cost and delay is a fait accompli.

III. RECOMMENDATIONS AND THEIR BASES

A. Recommended Measures, Rules, and Programs

1. Civil and Criminal Dockets

The perception is that the civil docket is disrupted by the criminal docket due to criminal "speedy trial" requirements. The Advisory Group discussed the establishment of separate civil and criminal dockets for this district, with judges assigned to each for rotating terms, but rejected this suggestion on the basis of practicality when considering the limited number of judges assigned to this district. The Advisory Group was also concerned that a rotation system would permit the prosecutor to select or avoid a judge by timing his or her indictment and that to be effective, the rotating judge should be assigned for a two year term, rather than for a three or six month term.

Although the relatively small and stable number of criminal filings (132 to 189 per year) would appear to permit some predictability as to the time the Court must commit to criminal cases a year, the predictability stems from the types of cases which varies over time. Some cases take more time than others. The predictability comes from the amount of investigative and prosecutorial resources available. This is dependent on executive branch decision and budgetary decisions made by Congress.

If one judge were assigned all criminal cases, an overload could develop that would require other judges to be temporarily taken from their civil dockets. This removal would compound the problem for attorneys on the civil docket since the judge assigned to handled a civil docket would leave, without anticipation, to handle the overload of criminal cases. The effect of this would be to erode the element of predictability currently existing. With the present system, while the criminal docket does take precedence over the civil docket, a trailing attorney can always identify the specific cases ahead of his or her civil case and monitor their progress.

The problems of predictability as to when a civil case will come to trial is no different when considering waiting for criminal cases as well as civil cases. The effect of two or three criminal cases on the docket that may or may not plead out is no different than the effect of two or three civil cases that may or may not settle. This is just a fact of practice in every Court.

<u>Recommendation 1:</u> The Court should schedule criminal and other civil matters so as to reduce interruptions during the trial of a civil case.

Often during a civil trial, the jurors, the witnesses, the attorneys and the parties are kept waiting while the judge handles matters that relate to either another civil case or to a criminal case. If these matters could be held for late in the day or until a given day and all done at one time, the jurors and other parties involved in the civil case could be excused to go

about their business. All parties would save time and reduce the expense of civil litigation. If such scheduling were announced in advance, jurors could make plans to address their personal needs such as medical appointments, day care, employment, shopping, and food preparation. As side benefits, a juror's understanding of a case would be enhanced by the continuity of the presentation of the evidence and his or her resentment toward a system that permits constant interruption would be addressed.

2. Civil Docket Schedules

Recommendation 2-1: In a multi-week trial, the Court should schedule the jury trial for four days a week, rather than five.

By scheduling the jury trial in a multi-week trial for four days a week, rather than five, the Court could free jurors to use the fifth day for personal needs. The jurors would then know that they were called--not to sit around--but to try the lawsuit assigned. This also addresses the fact that during a long trial, jurors tend to wear out (as do judges, parties and lawyers).

The judge could use this day to handle criminal and other civil matters that had accumulated. The attorneys could also use this day to gain a respite from the pressure of a long jury trial and to address other matters that have accumulated. With fewer interruptions and a shorter trial week, the time taken to try a case may be reduced and other matters handled in a more expeditious manner.

Recommendation 2-2: The Court should use separate and consecutive jury selection at the beginning of the jury docket, rather than selecting a jury when each case commences.

When separate and consecutive jury selection is used, jurors are selected at the beginning of the docket for all the cases on the docket that the judges expect to reach. After the selection process has been completed, the first jury begins to hear its case and the other juries are sent home until their cases are called. This streamlines the jury selection process, saves the Court and the jurors time and money.

Recommendation 2-3: The Court should encourage litigants to try their cases before a Magistrate Judge by permitting attorney voir dire, offering firm trial dates, and permitting jurors to take notes or be given a trial notebook.

Among attorneys' chief complaints is uncertainty over when trials actually will start and frustration over continuances and delays. Trials before a Magistrate Judge reduce this uncertainty, thus eliminating preparation of the same case for trial on several occasions, reducing attorney's fees and the cost of litigation.

3. Judicial Involvement in Pretrial Preparations

Recommendation 3-1: The Court should consider scheduling an early Article III Judge conference in each case, concurrent with filing the joint discovery plan by the parties, thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

At the Article III judge conference, the parties can review their discovery plan and discuss their dispositive motions; the judge may give some clue as to the merit of the motions. This may facilitate an early resolution of the case in a subsequent pretrial settlement conference.

Recommendation 3-2: The Court should expand the present use of exhibit conferences and the preadmission of exhibits and demonstrative aids.

The admission of exhibits and demonstrative aids during trial causes unnecessary interruption in the flow of a trial and prolongs the presentation of the case. The present practice of exhibit conferences and the preadmission of exhibits and demonstrative aids have saved the court time and the parties money. These practices should be expanded.

4. Discovery

a. Controlling Discovery

1) Discovery Plan

Recommendation 4-1: The Court should order both parties to submit a joint preliminary discovery plan to the Court within a short time after the filing of a responsive pleading by the defendant. This joint discovery plan would:

- **identify, by name or subject, all witnesses each party would want to depose;**
- **outline information to be sought by request or interrogatory;**
- **estimate anticipated discovery costs; and**
- **inform the Court what dispositive motions are foreseen by the parties.**

Counsel must certify to the Court that:

- **the joint discovery plan has been reviewed with the client;**
- **the client has approved of the plan; and**
- **the client has been furnished a copy of "Alternative Dispute Resolution in the Northern District of Oklahoma" and has reviewed this pamphlet with counsel.**

Discovery costs are a major contributor to the cost of litigation. By controlling discovery costs, the Court will take

a major step toward controlling the cost of litigation. A joint discovery plan puts into focus the scope of discovery and its estimated anticipated costs.

Requiring the attorney to certify that his or her client has reviewed and approved the joint discovery plan may give the client enough information to evaluate what it would cost to do discovery on the case and what the case is worth. With this information, the client may have a greater interest in seeing an ADR solution rather than pursuing litigation. The ADR pamphlet provides the client with a summary of the available ADR services in the Northern District of Oklahoma, and the review of this pamphlet with counsel will assist the client in evaluating the various ADR services as they apply to his or her case.

2) Extent of Discovery

Recommendation 4-2: Depending on the nature and complexity of the case, the Court, at its Article III Judge conference, should consider setting preliminary limits on the amount of all forms of discovery, with attorneys later having the right to ask to expand or reduce discovery.

Judges, at the Article III judge conference, should tailor limitations on discovery to the case. Therefore, the Advisory Group would not recommend setting a numerical limit in the abstract. Focusing the parties' attention on an efficient joint discovery plan, with judicially set limits, could substantially reduce the cost of discovery which has become one of the runaway costs in litigation.

The pretrial settlement conferences, the primary ADR program in the Northern District, forces the attorneys to assess the anticipated costs of discovery in light of the settlement judge's evaluation as to the likely outcome of trial.

3) Insuring Compliance with Appropriate Requested Discovery in a Timely Fashion

Recommendation 4-3: The Court should continue to encourage the practice of good faith compliance with appropriate requested discovery.

Good faith compliance with appropriate requested discovery in a timely fashion is the practice of this district.

b. Effort by Parties to Resolve Discovery Disputes

Recommendation 4-4: The Court should continue to use a good faith conference requirement between opposing counsel as a condition precedent to filing a discovery motion and a motion in limine.

Counsel cannot file a motion to compel discovery or a motion

in limine unless he or she speaks with opposing counsel. This is in compliance with principle five of 28 U.S.C. § 473(a)(5)--"A Golden Rule:"

> conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

c. Approval of Deadline Extensions

Recommendation 4-5: The Court should continue the practice of having counsel, rather than client, request extensions of time, and these requests should be granted by the Court as appropriate.

Since extensions of time are seldom anticipated until shortly before the deadline, signed consents from out of town or international clients would be very difficult to obtain. The benefit of having clients request extensions of time is difficult to see and the burden is quickly identified. If a rule requiring client signature is necessary to curtail extension requests, this indicates that the current system is being abused, which is not the case in the Northern District of Oklahoma. The judges grant extensions of time only in cases that warrant the extensions.

d. Voluntary Disclosure and Cooperative Discovery

Voluntary disclosure and cooperative discovery are part of the proposed new Federal Rules. Many times it is difficult to understand what a party wants in a request for documents or interrogatories. Discovery disputes arise when parties do not produce the information specifically requested (or thought to have been requested) by a party. Discovery between cooperative counsel is not a problem now in the Northern District of Oklahoma. Discovery between uncooperative counsel might be impossible and ultimately take a great deal of the Court's time.

The new Federal Rules of Civil Procedure 26 (effective December 1, 1993) deals with voluntary disclosure and cooperative discovery. It provides that the plaintiff's attorney must furnish all the information he or she believes that the defendant might like to have about the plaintiff's side of the case within 30 days after the complaint has been filed. The defendant's attorney has to supply the same within 30 days thereafter. This rule will probably cause delays and increase the cost of litigation.

e. Adjunct Discovery Judges

Recommendation 4-6: The Court should consider, in appropriate cases, using adjunct discovery judges to resolve discovery issues. Upon agreement of the parties, these adjunct discovery judges would be compensated by the parties.

The use of adjunct judges to resolve discovery issues in appropriate cases seems to be a logical extension of the Adjunct Settlement Judge Program that has been so successful in this district. The use of an adjunct discovery judge could quickly resolve discovery disputes, decrease the amount of duplication in the discovery process, decrease the amount of discovery necessary for a case, increase the amount of material exchanged cooperatively, reduce the time necessary for discovery and save the parties money. The adjunct discovery judge should be appointed as a standing discovery judge for the particular case.

f. Abatement of General Discovery During the Pending of Dispositive Motions

Recommendation 4-7: The Court should abate general discovery in appropriate cases while dispositive motions are pending.

Discovery during the pending of dispositive motions is a major source of additional costs. If discovery is limited to dispositive issues [Fed. R. Civ. P. 56(f) entitles the parties to do discovery in an effort to respond to the motion for summary judgment], discovery can be completed relatively quickly. By bifurcating discovery in appropriate cases so general discovery during the pending of dispositive motions can be abated, the court can reduce a major source of additional costs.

The abatement of general discovery could only work if it is part of an overall plan to speed the disposition of dispositive motions. Otherwise abatement would only build more delay into the system.

The overall time for discovery should be no longer that it currently is, but by bifurcating discovery motions from dispositive motions, discovery costs could be substantially reduced.

5. Dispositive Motions

Recommendation 5-1: The Court should rule more quickly on dispositive motions, well ahead of trial dates. This may be done by:

- **continuing to limit the length of briefs;**
- **deciding some cases from the bench after oral argument with findings and conclusions prepared by the prevailing party;**
- **deciding some dispositive motions on briefs rather than after oral argument;**
- **adding career or long-term law clerks as needed; and**
- **utilizing the newly installed ICMS to apprise the Court and its clerks of the status of dispositive motions.**

The most consistent message that the Advisory Group heard from all the people interviewed during this process was that in order to cut costs and reduce delays, respondents believe the Court must rule more quickly on dispositive motions, well ahead of trial dates. While a dispositive motion is pending, the litigants continue to spend money on general discovery (unless discovery has been bifurcated and discovery that does not deal with dispositive motions is abated). [See Recommendations 4.A(3) and 4.f.] Ruling more quickly on dispositive motions could eliminate much work done needlessly and at considerable cost. Early rulings on dispositive motions could substantially shorten the time needed to resolve disputes.

Briefs on dispositive issues should continue to be limited in length (briefs are currently limited to 25 pages) and to be focused on issues appropriate for the dispositive motion. If the Court could follow the briefs with a prompt ruling, or follow an oral argument with a ruling from the bench with findings and conclusions to be prepared by the prevailing party, the biggest single cause of delay would be eliminated.

The timely rulings on dispositive motions may be only a short term problem. Since Judge Cook took senior status, the Northern District has operated with the equivalent of two judges. Nominations are pending for Judge Cook's replacement, who will also be a roving judge for the Eastern District, and for the newly approved Article III judge. By the end of 1993, the Northern District should be operating with its full complement of judges. Some of this increase in judicial resources (total 3.67 judges sitting) should dispose of the backlog of dispositive motions.

Even if there is not a full disposition of the case on a motion for summary judgment, a motion for summary judgment is a very useful tool to narrow the issues and causes of action.

Recommendation 5-2: **If 28 U.S.C. § 636 is revised so that a party could preserve an issue for ultimate appeal to the Circuit Court without first appealing a ruling of the Magistrate Judge to the District Court, a procedure could be developed whereby the parties could consent to refer dispositive motions to the Magistrate Judge. If a party wished to appeal the Magistrate Judge's ruling granting dispositive relief, the appeal would be to the Circuit Court rather than to the District Court.**

Under 28 U.S.C. § 636, a party must appeal a ruling by the Magistrate Judge to the District Court in order to preserve an issue for appeal to the Circuit Court. Under this statute, litigation time would be increased if the Magistrate Judges ruled on dispositive motions because there would be two appeals (one to the District Court and the second to the Circuit Court) rather than one (from the District Court to the Circuit Court). If the statute were changed so the issue were preserved without an appeal to the District Court, the Magistrate Judge could, if the parties consented, rule on dispositive motions, speed the process, and save the parties time and expense.

Recommendation 5-3: **The Court should continue its firm stance against dilatory motions.**

Dilatory motions can increase the cost of litigation and delay processing cases. The Judges in the Northern District have the reputation among practicing members of the bar of not tolerating dilatory motions. As a result, few dilatory motions are raised.

Recommendation 5-4: **The Court should consider limiting written explanatory orders to deserving cases.**

For most motions, the parties are served best by getting an early ruling without a written reasoned opinion. To provide the parties with written explanations for all decisions would add overwhelming and unnecessary work. The Court should not take the time to write explanatory orders unless they are very helpful to the parties, speed the case, or avoid an appeal.

Recommendation 5-5: **Each District Court Judge should experiment with holding a motion docket for accelerated dispositive motions. Cases would be assigned to the accelerated motion docket at the Article III Judge early conference (see Recommendation 3-1) and would be subject to the following rules:**

- **the motion, including a citation of authorities, will be limited to five pages;**
- **briefs will not be filed to accompany the motion;**
- **oral arguments will be subject to a time limit; and**
- **the Court will rule from the bench with parties to prepare appropriate findings, conclusions and orders.**

An oral motion docket may shorten the time needed for making

decisions on dispositive motions. Controlling the number of pages for the motions will permit the Judge to prepare, hear, and decide more motions in a shorter period of time.

6. Trial Procedures

a. Referring Cases to a Magistrate Judge

Recommendation 6-1: The Court should refer cases to a Magistrate Judge when the parties stipulate that they will not appeal the Magistrate Judge's ruling to the District Court.

If the additional judicial resources do not reduce the backlog of dispositive motions and decrease the time needed to rule on these motions (when the Court has a backlog as it has at present), and if the statute requiring appeal to the District Court in order to preserve an issue for appeal to the Circuit Court is not changed, then cases should be referred to the Magistrate Judge through the consent jurisdiction to move the motion docket along. If the parties consent to having a Magistrate Judge rule on their case, then the parties should stipulate not to appeal the Magistrate Judge's rulings to the District Court, otherwise both the Magistrate Judge and the District Court Judge would be required to hear and rule on the same case, thus duplicating effort, increasing costs, and extending the time before the matter is finally resolved. (Unfortunately, most litigants are not willing to waive their right to appeal.)

b. Limiting the Number of Witnesses and the Time for Testifying

Recommendation 6-2: In every case, the Court should consider limitations on the number of expert witnesses, the number of fact witnesses and the time given to testify at trial.

Limiting the number of witnesses and the time that each witness will testify are controversial issues. Clearly the trial judge has the discretion to limit testimony by the number of witnesses and the duration. The concept of limiting time of testimony comes from the belief that an excessive number of witnesses are being produced by parties and examined for an excessive length of time,thus resulting in much cumulative and repetitious testimony. This is a question of balancing the right of a party to fairly present his or her case (although perhaps not in its most persuasive fashion) in whatever way the party wishes against the understanding that there are other cases requiring disposition and that permitting a party to inquire endlessly of multiple witnesses is a waste of time. Both positions are well taken.

Limitation of testimony was (in the view of the Court)

successfully used by the Court in asbestos cases in this district. The net effect was that the asbestos cases were disposed of very quickly in this jurisdiction.

The Court should utilize its discretion in limiting witnesses in time and number in the appropriate cases.

c. Presenting Direct Testimony by Narrative

Recommendation 6-3: The Court should experiment with permitting some witnesses, especially expert witnesses, to present their evidence on direct examination either through a narrative format or through a partial narrative format.

Where the narrative and partial narrative format have been used in the asbestos cases, the jurors, upon being interviewed, liked the format. They said that they knew exactly where the testimony was going (the credentials segment, the background segment, and the opinion segment). It proved to be a very effective way to expedite trial presentation.

d. Presenting Testimony by Deposition

Recommendation 6-4: The Court should permit some witnesses, in addition to medical experts, to present their evidence through deposition even though these witnesses may be subject to subpoena.

In some instances, the physical presence of the witness in the courtroom may not add to or detract from the testimony. In these instances, if the Court permits a witness to present evidence through deposition, the trial may proceed expeditiously, thus saving time and expense.

This recommendation stresses a greater use of Federal Rules of Civil Procedure 32(a)(3). Rule 32(a)(3) provides:

> The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:
>
> (A) that the witness is dead; or
>
> (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or
>
> (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or
>
> (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
>
> (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

e. Jury Selection

1) Pre-Service Screening Questionnaire

Recommendation 6-5: The Court should implement a more extensive pre-service screening questionnaire and expand the present process by which the trial judge permits each lawyer to submit and continue to submit questions for the Court to ask prospective jurors. A copy of each completed pre-service screening questionnaire should be furnished to each counsel in advance of the time the jury is called to be examined.

Attorneys have expressed to the Advisory Group an interest in increasing the information they have about prospective jurors. At present, attorneys feel that they lack an understanding of a potential juror's factual background. This increase in information could be accomplished by a more extensive pre-service questionnaire. This more extensive pre-service questionnaire, when combined with an expansion of the present process by which the trial judge permits each lawyer to submit and continue to submit questions for the Court, to ask prospective jurors, should alleviate some of the attorneys concern.

2) Voir Dire

Recommendation 6-6: The Judges are encouraged to consider the use of attorney voir dire in appropriate cases to supplement the initial voir dire by the Court.

If attorneys are allowed to present voir dire, the risk is present that voir dire may take the often abusive form found in the state court. Every good trial school and trial manual will assert that voir dire is the attorney's first chance to present his or her case to the jury, to get them to like the attorney, to understand the attorney's concerns about weaknesses in his or her case and to become the attorney's ally.

The Federal Rules currently authorize each judge to permit lawyer voir dire. It is, however, seldom used. This recommendation permits the attorney to have limited voir dire, in appropriate cases, and only to supplement the initial voir dire by the Court.

f. Experts

Recommendation 6-7: In an appropriate case, the Judge should consider the use of court-appointed independent experts. In any case where a court-appointed independent expert will be used, counsel should be given an opportunity to participate in the selection process.

Court-appointed experts could reduce the number of expert witnesses and the repetition which often occurs with competing

expert testimony. If Article III judges becomes involved at an early stage in the process, the parties could assist the judge in the selection process. By sponsoring a court-appointed expert and thus limiting the number of experts who will or may testify, the costs to depose expert witnesses and thus the costs for discovery will be reduced.

Since court-appointed experts only receive $40 a day and mileage, some arrangement must be made for the parties to share the costs for these experts. The allocation of costs could be discussed when the Article III judge becomes involved in the case and could be incorporated into the joint discovery plan.

While the problems with a court-appointed independent expert are varied and complex (e.g., identifying appropriate panels of experts, funding the experts, investigation and testimony), the Advisory Group recommends the Court consider the use of this concept.

7. Alternative Dispute Resolution

a. Existing Alternative Dispute Resolution Programs in the Northern District of Oklahoma

The existing ADR programs in the Northern District of Oklahoma are:

- pre-trial settlement conference (by a magistrate judge or an adjunct settlement judge);
- trial before a magistrate judge;
- mini-trial;
- summary jury trial (including a binding summary jury trial with high/low parameters).

1) Pre-trial Settlement Conference

The most prevalent form of ADR used in the Northern District of Oklahoma is the pre-trial settlement conference. During the scheduling conference, the Magistrate Judge discusses whether a settlement conference would be appropriate for this case and when it should be scheduled. The parties are asked whether they would consent to an adjunct settlement judge. If the parties consent, then an adjunct settlement judge is matched to the case and assigned the case. He or she will then work with the Courtroom Deputy in Magistrate Wagner's Office to select a date and place for the conference. Once the date and place have been established, the Magistrate's Office sends the parties a Settlement Conference Order. (Settlement Conference Order form is attached as Appendix E.) If the parties do not consent to an adjunct settlement judge, the other Magistrate Judge will conduct the settlement conference.

<u>Recommendation 7-1:</u> The Court should continue to promote pre-trial settlement conferences.

The settlement conferences have been very effective in the

Northern District and they should continue to be promoted. They not only save the litigants time and money, but they also provide the litigants with a third party's assessment of the case and an opportunity for the litigants to control their own destiny.

Recommendation 7-2: The Court should promote settlement efforts at the earliest possible time and continue as appropriate.

Although the timing of when a settlement conference should be held is a critical element in fostering settlement, attorneys appear to disagree as to when is the appropriate time. Some believe a conference should be held early in the process, before substantial discovery costs have mounted. Others would like the settlement conference to be after discovery when a better assessment of the case can be made. If the settlement conference is delayed until the eve of trial, then no savings as to discovery can be achieved. The timing of the settlement conference has been and should continue to be discussed among the Magistrate Judge and the attorneys at the scheduling conference.

Since the needs for the litigants and their attorneys may differ from case to case, a flat rule applicable to all cases as to when a settlement conference should be held would not be appropriate.

Recommendation 7-3: If an Article III Judge makes an early intervention to evaluate a case, the Article III Judge should consider suggesting an early settlement conference.

If the prior recommendation of having early intervention of an Article III judge is implemented, the process could work as follows. The Article III judge would require an appearance by the parties in the case within a very short period of time after a responsive pleading is filed to present the judge with identification of any dispositive motion issues that may exist. The judge would then determine what he or she wanted to do about it. If, when evaluating the case, the judge believed that there was no lawsuit, he or she would encourage dismissal by the plaintiff. The judge could suggest that the case be sent to a settlement conference and refer the case to a Magistrate Judge for scheduling the settlement conference. If the judge believed that there was a potential dispositive motion issue, he or she would have discovery for a limited period of time or discovery limited to the potential dispositive motion issue. Upon the completion of this discovery, the judge would conduct the dispositive motion hearing orally and rule on it from the bench. If issues remained, the case would be set for a scheduling conference before a Magistrate Judge. At the scheduling conference, the Magistrate Judge would then evaluate whether the case was ripe for a settlement conference and if so, make the necessary scheduling arrangements.

Recommendation 7-4: The Clerk's Office should distribute a brochure on alternative methods of dispute resolution to counsel to be passed on to and discussed with clients.

This brochure, "Alternative Dispute Resolution in the Northern District of Oklahoma, A Summary of Available Services," would contain information concerning the range of ADR options available. (See Appendix D for a copy of the brochure.)

Recommendation 7-5: Counsel should certify in the discovery cost plan, which would be submitted to the Court prior to the early intervention by the Article III Judge, that they have delivered the ADR brochure to their clients and have discussed ADR with them.

A method must be developed to insure that the ADR brochure has been passed on to the client. Prior to the early intervention by the Article III judge, each attorney will be submitting to the Court a discovery cost plan. This form could include:

- the dispositive issues;
- what discovery would be required to resolve the dispositive issues; and
- a certification of notification that the ADR brochure has been delivered and discussed with the client.

Recommendation 7-6: The settlement administrator should develop a questionnaire to be completed by both the attorneys and the litigants at a time in the process deemed appropriate by the settlement administrator.

The periodic use of a questionnaire given to both the attorneys and the litigants could be useful in monitoring the pre-trial settlement conference program. The timing for issuing the questionnaire is left flexible and within the discretion of the settlement administrator and may vary depending on whether the case settles at the conference, several days after the conference through a call-in system to the settlement administrator, or at some later date. The questionnaire should not divert attention from the settlement process itself.

The constant monitoring with resulting improvements of the program will further reduce cost and delay.

Recommendation 7-7: To the extent that it is feasible, a mechanism should be developed to make a settlement conference available immediately before trial if, in the view of the parties, it would be beneficial to a potential settlement of the case.

A number of cases could profit by having an eleventh hour settlement conference with the distinct possibility of avoiding the trial. Some mechanism needs to be in place to handle those cases that appear to need the assistance of a settlement judge and a settlement conference within a week of the trial date. The schedules of the magistrate judges and the adjunct settlement judges do not permit such short notice conferences.

2) Adjunct Settlement Judge Program

Recommendation 7-8: The Court should continue the Adjunct Settlement Judge Program at its present level of Adjunct Settlement Judges or increase the number of Adjunct Settlement Judges at the discretion of the Chief Judge.

Currently, most of the settlement conferences in the Northern District of Oklahoma are being conducted by the two Magistrate Judges and the 24 adjunct settlement judges who have been trained by the Magistrate Judges for this purpose. (The number of adjunct settlement judges began with six, was increased to 16 and was recently increased to 24.) The adjunct settlement judges average about one case a month each.

In selecting the latest group of adjunct settlement judges, special attention was paid to certain substantive areas which were not covered by the current adjunct settlement judges.

The expansion of the program increases the number of settlement conferences that can be offered and reduces the number of settlement conferences that the Magistrate Judges must conduct.

Recommendation 7-9: The Court should institutionalize, through the Clerk's Office, the scheduling, space allocation, and assignment of adjunct settlement judges to particular substantive cases, the assignment being in coordination with the Magistrate Judge who currently performs these functions.

Although the Adjunct Settlement Judge Program began as an experiment with six adjunct settlement judges, the program has been expanded to include 24 adjunct settlement judges. To make this program manageable and to insure its continued success beyond existing personnel, the program must be institutionalized and scheduling handled administratively.

The institutionalization of the program will free up time for the Magistrate Judge and the Magistrate Judge's support staff, presently deeply involved in supervising the program, even in those case in which the Magistrate Judge does not conduct the settlement conference. The time the Magistrate Judge saves by not administering the program could be used to conduct jury trials, thus saving the District Court Judges' time to conduct their early interventions.

Recommendation 7-10: The Magistrate Judge should be permitted to recommend to the District Court Judge the assignment of a senior adjunct settlement judge (i.e., an adjunct settlement judge who, over several years of service in the program, has demonstrated exceptional skills at settlement and has been so designated by the District Court Judges) to a case as a special project, on a paid basis, providing the case warrants such treatment and the parties consent.

A senior adjunct settlement judge, when assigned to a

special project case, could relieve the Magistrate Judges of the burden of spending a disproportionate amount of time on a single case. The parties would receive the benefit of having a senior adjunct settlement judge assigned only to their case so the case could receive special attention and the settlement process could be expedited.

Such appointment shall came from the District Court Judge on recommendation by the Magistrate Judge.

3) Other Alternative Methods of Dispute Resolution Including the Summary Jury Trial

Recommendation 7-11: The Court should continue to experiment with various alternative methods of dispute resolution, including the summary jury trial.

The Magistrate Judges have experimented with other forms of ADR including several variations of a summary jury trial. (For example, one experiment involves the parties consenting to a summary jury trial, each side presenting two witnesses and exhibits, the parties agreeing that the jury's decision will be binding, and the plaintiff's and defendant's last offers forming the highest and lowest measure of recovery.) These experiments have, at times, led to settlements and have broadened the Court's, the attorneys' and the litigants' understanding of ADR.

b. Court Annexed Arbitration in the Northern District

Recommendation 7-12: The Court should not add court annexed arbitration in the Northern District of Oklahoma.

Those attorneys interviewed by the Advisory Group (either in person or though questionnaires) who were familiar with Court annexed arbitration expressed no interest in adding it as an ADR tool in the Northern District of Oklahoma. The litigants interviewed by the Advisory Group preferred to have the decision made in their case by a judge (and possibly a jury) rather than to arbitrate and have the decision made by a practicing attorney.

c. Standards for Settlement Conferences

Recommendation 7-13: The Court should formalize a set of guidelines to govern settlement conferences.

In order to preserve the integrity of the settlement conference once the program is moved from the Magistrate Judge's office to the Court Clerk's office, guidelines for settlement conferences should be developed. The development of these guidelines could be delegated by the Court to the administrator of the program. The Magistrate Judges and the current adjunct settlement judges could also have a role in the development of these guidelines.

d. Permanent ADR Committee

Recommendation 7-14: The Court should establish a permanent Alternative Dispute Resolution Committee composed of members of the bar of this District and lay persons to advise the Court on ADR programs and implement the ADR recommendations of the Civil Justice Reform Act Advisory Group, as instructed by the Court.

The local rules currently provide for two standing committees: Admissions and Grievance. The Advisory Group suggests that the local rules be revised to add a standing ADR Committee. This committee could not only monitor the current ADR programs in the district, but also suggest enhancement of current programs and the creation of new programs.

8. Efficient Use of Personnel

Recommendation 8: The Magistrate Judges should conduct more trials.

The use of Magistrate Judges to conduct trials could provide the litigants with an opportunity to get to trial at a much earlier date. This recommendation is based on the premise that all parties consent to the Magistrate Judge conducting the trial.

The two Magistrate Judges have conducted a total of nine trials during their tenure. At present, a counsel consent to proceed is given to the plaintiff when the case is filed or to the defendant if the case is removed. Judge Brett has asked that in the future copies be provided to the opposing counsel that has not received them.

This program has been very successful in the Eastern District. This program may not have received sufficient publicity for attorneys to be aware of it as an option for expediting a case. The Court might consider whether offering attorney voir dire in a magistrate judge trial would induce more trials in that Court.

Clearly it would be good to have a procedure available by which a simple trial could be transferred to a Magistrate Judge. The Court could even be permitted to encourage Magistrate Judge trials.

28 U.S.C. § 636(c)(2) permits the Clerk, at the time of filing pleadings, to notify the parties of the right to a Magistrate Judge trial. Thereafter, "neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference group of any civil matter to a magistrate." The federal court study has recommended an amendment to permit subsequent advice.

9. The Need to Increase Personnel

a. Magistrate Judges

Recommendation 9-1: The Court should recommend that the number of full-time Magistrate Judges be increased from two to three.

In light of consent jurisdiction (and the fact that the Magistrate Judges are now trying cases, and the recommendation that they conduct more trials), the increase in the number of Federal District Court judges in the Northern District, and the increased emphasis on settlement conferences and other alternative methods to resolve disputes, a third full-time Magistrate Judge is needed.

b. Court Clerk Personnel

Recommendation 9-2: The Court should convert the temporary position that was made available through the Civil Justice Reform Act to a permanent position and have the new Deputy Court Clerk assume clerical responsibility for the Adjunct Settlement Judge Program and have responsibility for using the new computer system and software to monitor and report civil activity.

In order to have the personnel in the Clerk's Office to handle the institutionalized and expanded Adjunct Settlement Judge Program, an additional assistant Court Clerk under the direction of the Court Clerk should be created. The new Deputy Court Clerk could also be responsible for monitoring civil activity using the new computer system and software.

10. Technology

Recommendation 10-1: The Court should continue to seek appropriate funds for modern technology to improve the functioning of the Clerk's Office, the Courts, and the accessibility of information by the practicing bar.

The use of modern technology will save attorneys and their staffs the need to go to the courthouse, thus saving time and money for the client. The use of modern technology will also reduce the staff time for the Office of the Clerk and the Courts.

Recommendation 10-2: As new technology becomes economically feasible, the Court should install an information system which provides full text of all filed documents in a case it monitors in chambers and in the Court.

Recommendation 10-3: The Court should expand the use of conference calls where practicable.

Many judges presently use the telephone to conduct conferences and hearings. The Advisory Group would encourage the use of conference calls in lieu of actual appearances, thus reducing the time an attorney must spend on a case.

11. Enhancing the Quality of the Documents Submitted to the Court

Recommendation 11: As a condition to admission to practice in the Northern District of Oklahoma, the Court should require each applicant to successfully complete a CLE course on the local rules and on how to write briefs for this district. The CLE course could be designed and offered by the Grievance and Admission Committee of the Northern District.

The consensus among the Judges and their law clerks is that the quality of the briefs accompanying motions filed in this Court is generally mixed. In some briefs, citations are not reliable and the writing is poor. The existence of unreliable information in briefs is not only unfortunate, but it delays the Court in the process of ruling on dispositive motions. This recommendation addresses continuing legal education to raise the general level of practice in the community.

12. Educational Mission--Judicial Internships

Recommendation 12: The Court should continue to utilize Judicial Interns from The University of Tulsa College of Law and other ABA accredited law schools.

For the past ten years, the Court has participated in a judicial internship program with The University of Tulsa College of Law. Second and third year law students enroll for one or two credit hours at the College of Law and are assigned to either a District Court Judge or a Magistrate Judge. The law student is supervised by the Judge and the Judge's Law Clerk(s). Students learn about the inner workings of the Court and provide the Court with research services. Students receive no compensation. The program has, over the years, given students a sense of their ethical duties toward the Court and has contributed to increasing the competence of new lawyers.

13. Local Rules

a. Local Rules Consistent with the Court's Plan

Recommendation 13-1: The Court should revise the Local Rules so they are consistent with the Plan adopted by the Court and with increased use of technology.

b. Standing ADR Committee

Recommendation 13-2: The Court should revise the local rules to add a standing ADR Committee.

c. Uniform Local Rules Among the Three Oklahoma Districts

Recommendation 13-3: The Court should continue to work with the Chief Judges of the Eastern and Western Districts of Oklahoma to develop local rules that will apply uniformly to the three Oklahoma districts.

B. The Significant Contributions To Be Made by the Court, the Litigants, and the Litigants' Attorneys toward Reducing Cost and Delay

As required by 28 U.S.C. § 472(c)(3), these recommendations by the Advisory Group require the Court, the litigants, and their counsel to make significant contributions toward reducing cost and delay and thereby facilitating access to the courts.

1. Contributions by the Court

As recommended by the Advisory Group, the Court's contributions would include:

Scheduling--

altering current scheduling practices by:

- scheduling criminal and other civil matters so as to reduce interruptions during the trial of a civil case. Recommendation 1.
- scheduling multi-week jury trials for four rather than five days during the week. Recommendation 2-1.

Jury Selection--

- altering current jury selection practices by using separate and consecutive jury selection at the beginning of the jury docket, rather than selecting a jury when each case commences. Recommendation 2-2.
- implementing a more extensive pre-service screening questionnaire and permitting attorneys to submit a greater number of questions. Recommendation 6-5.
- permitting attorney voir dire in appropriate cases to supplement the initial voir dire by the Court. Recommendation 6-6.

Discovery--

- ordering the parties to submit a joint preliminary discovery plan to the Court. Recommendation 4-1.
- reviewing the joint discovery plan with the attorneys and their clients. Recommendation 4-1.
- setting preliminary limits on the amount of all forms of discovery and reviewing subsequent requests to expand or reduce discovery. Recommendation 4-2.

- appointing an Adjunct Discovery Judge, in an appropriate case, to resolve discovery issues. Recommendation 4-6.
- abating general discovery, in appropriate cases, while dispositive motions are pending. Recommendation 4-7.

Early Article III Judge Conference--

- conducting an early Article III judge conference in each case, concurrent with filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs. Recommendation 3-1.

Dispositive Motions--

- ruling more quickly on dispositive motions, well ahead of the trial dates. Recommendation 5-1.

Explanatory Orders--

- limiting written explanatory orders to deserving cases. Recommendation 5-4.

Motion Docket--

- holding a motion docket for accelerated dispositive motions. Recommendation 5.5.

Streamlining the Trial--

- limiting the number of expert witnesses, the number of fact witnesses, and the time given to testify at trial. Recommendation 6-2.
- permitting some witnesses, especially expert witnesses, to present their evidence on direct examination either through a narrative format or through a partial narrative format. Recommendation 6-3.
- permitting some witnesses, in addition to medical experts, to present their evidence through deposition even though these witnesses may be subject to subpoena. Recommendation 6-4.
- using court-appointed independent expert witnesses with counsel actively participating in the selection process. Recommendation 6-7.

Settlement Conferences and Other Methods of ADR--

- promoting settlement efforts at the earliest possible time and continuing as appropriate. Recommendation 7-2.
- suggesting an early settlement conference at the early Article III judge conference. Recommendation 7-3.
- distributing through the Clerk's Office an ADR brochure to counsel to be passed on to and discussed with their clients. Recommendation 7-4.
- developing (settlement administrator) a questionnaire to be completed by both the attorneys and the litigants. Recommendation 7-6.
- developing a mechanism to make settlement conferences available on the eve of trial. Recommendation 7-7.
- institutionalizing, through the Clerk's Office, the adjunct settlement judge program. Recommendation 7-9.
- continuing to experiment with various ADR methods, including the summary jury trial. Recommendation 7-11.
- formalizing a set of guidelines to govern settlement conferences. Recommendation 7-12.
- establishing a permanent ADR Committee to advise the Court. Recommendation 7-14.

Technology--

- continuing to add new technology as it becomes economically feasible. Recommendation 10-2.
- expanding the use of conference calls where practicable. Recommendation 10-3.

2. Contributions by the Litigants

As recommended by the Advisory Group, the litigants' contributions would include:

Discovery--

- reviewing the discovery plan with counsel and approving the plan. Recommendation 4-1.
- consenting, in an appropriate case, to the use of an adjunct discovery judge to resolve discovery issues and compensating the adjunct discovery judge for his or her services. Recommendation 4-6.

Early Article III Judge Conference--

- actively participating in an early Article III judge conference where the judge will provide a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs. Recommendation 3-1.

Settlement Conference and Other Methods of ADR--

- reviewing the pamphlet "Alternative Dispute Resolution in the Northern District of Oklahoma" with counsel and determining the appropriate method of dispute resolution for the case. Recommendation 4-1.
- completing the questionnaire developed by the settlement administrator concerning the settlement process. Recommendation 7-6.
- consenting to an adjunct settlement judge and, in an appropriate case, compensating the adjunct settlement judge for his or her services. Recommendation 7-10.

Trial Before a Magistrate Judge--

- consenting, when appropriate, to trial before a Magistrate Judge. Recommendation 2-3.

Streamlining the Trial--

- cooperating in the Court's attempt to streamline the trial. Recommendations 6-2, 6-3, 6-4, & 6-7.

3. Contributions by the Litigants' Attorneys

As recommended by the Advisory Group, the contributions by the attorneys would include:

Discovery--

- preparing with opposing counsel and submitting to the Court a joint discovery plan which would identify the principal witnesses to be deposed, outline information to be requested by formal discovery or interrogatory, estimate anticipated discovery costs, and inform the Court what dispositive motions were foreseen. Recommendation 4-1.
- reviewing the discovery plan with client. Recommendation 4-

1.

- certifying to the Court that the joint discovery plan has been reviewed with the client, the client has approved the plan, and the client has been furnished a copy of the ADR pamphlet. Recommendation 4-1.
- advising the client whether this is an appropriate case in which to consent to the use of an adjunct discovery judge to resolve discovery issues and to compensate the adjunct discovery judge for his or her services. Recommendation 4-6.

Early Article III Judge Conference--

- preparing the client for and actively participating in an early Article III judge conference where the judge will provide the parties with a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs. Recommendation 3-1.

Settlement Conference and Other Methods of ADR--

- furnishing a copy of the pamphlet "Alternative Dispute Resolution in the Northern District of Oklahoma" to the client, reviewing this pamphlet with the client, and advising the client as to the appropriate method of dispute resolution for the case. Recommendation 4-1.
- completing the questionnaire developed by the settlement administrator concerning the settlement process. Recommendation 7-6.
- counseling the client whether this is an appropriate case to consent to an adjunct settlement judge on a paid basis. Recommendation 7-10.
- becoming familiar with and participating in various ADR methods being developed by the Court. Recommendation 7-11.

Trial Before a Magistrate Judge--

- encouraging the client, when appropriate, to have the client's case tried before a Magistrate Judge. Recommendation 2-3.
- preparing trial notebooks for the jurors when the case is tried before a Magistrate Judge. Recommendation 2-3.

Streamlining the Trial--

- cooperating with the Court in its attempt to streamline the trial. Recommendations 6-2, 6-3, 6-4, & 6-7.
- increasing the utilization of exhibit conferences by seeking the preadmission of exhibits and demonstrative aids. Recommendation 3.

Admission to Practice in the Northern District of Oklahoma--

- as a condition for admission to practice in this District, successfully completing a CLE course on the local rules and on how to write briefs for this district. Recommendation 11.

C. The Relationship Between Each Recommended Action and the Six Principles and Guidelines and the Six Techniques for Litigation Management and Cost and Delay Reduction

This section, as required by 28 U.S.C. § 472(a)(4), summarizes the Advisory Group's views on the six principles and guidelines and the five techniques.

1. The Six Principles and Guidelines for Litigation Management and Cost and Delay Reduction of 28 U.S.C. § 473(a)

Section 473(a) of the CJRA (28 U.S.C. § 473(a)) requires each United States district court, in consultation with its Advisory Group, to consider six specific principles and guidelines of litigation management and cost and delay reduction when formulating the provisions of its civil justice expense and delay reduction plan.

a. Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure for "systematic, differential treatment of civil cases" depending on criteria such as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

- Recommendation 3-2 encourages the Court to schedule an early Article III judge conference in each case, concurrent with filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

- Recommendation 2-3 encourages litigants to try their cases before a Magistrate Judge.

b. Early and Ongoing Control of the Pretrial Process By a Judicial Officer

Section 473(a)(2) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure to insure early and ongoing control of the pretrial process by a judicial officer.

- Recommendation 3-1 encourages the expansion of the present use of exhibit conferences and the preadmission of exhibits and demonstrative aids.

- Recommendation 3-2 encourages the Court to schedule an early

Article III judge conference in each case, concurrent with filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions.

- Recommendation 5-1 urges the Court to rule more quickly on dispositive motions, well ahead of the trial dates.

- Recommendation 5-5 suggests that the Court experiment with holding motion dockets for accelerated dispositive motions.

- Recommendation 6-2 suggests that the early Article III judge conference include consideration of limitations on the number of expert witnesses, the number of fact witnesses, and the time given to testify at trial.

- Recommendation 6-3 supports the presentation of direct testimony, especially by expert witnesses, in a narrative format.

- Recommendation 6-4 supports the presentation of testimony by deposition.

c. Use of Discovery-Case Management Conferences

Section 473(a)(3) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure requiring careful and deliberate monitoring, in complex or other appropriate cases, through a discovery-case management conference or conferences by a judicial officer.

- Recommendation 4-1 requires the parties to submit a joint preliminary discovery plan to the Court which includes anticipated costs.

- Recommendation 3-2 encourages the Court to schedule an early Article III judge conference in each case, concurrent with filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

- Recommendation 4-6 suggests the use of adjunct discovery judges, in appropriate cases, to resolve discovery issues.

- Recommendation 4-7 urges the Court to abate general discovery in appropriate cases while dispositive motions are pending.

d. Encouraging Discovery Through Voluntary and Cooperative Means

Section 473(a)(4) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure to encourage cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.

- Good faith compliance with appropriate requested discovery has been the practice in the Northern District of Oklahoma. Recommendation 4-3 encourages the Court to nurture this practice.

e. Informal Resolution of Discovery Disputes

Section 473(a)(5) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure requiring counsel to meet and attempt to resolve discovery disputes informally prior to the filing of discovery-related motions.

- A good faith conference requirement between opposing counsel has been a condition precedent to filing a discovery motion and a motion in limine in the Northern District. Recommendation 4-4 supports the continuation of this practice.

f. Authorization for Alternative Dispute Resolution

Section 473(a)(6) requires each United States district court, in consultation with its Advisory Group, to consider incorporating a procedure authorizing the referral of appropriate cases to alternative dispute resolution.

- Recommendation 7-1 encourages the Court to continue to promote pre-trial settlement conferences.

- Recommendation 7-2 urges the Court to promote settlement efforts at the earliest possible time and to continue as appropriate.

- Recommendation 7-3 suggests that the Article III judge at the early intervention conference suggest an early settlement conference.

- Recommendation 7-4 promotes the distribution of an ADR brochure by the Clerk's Office to counsel and their clients.

- Recommendation 7-5 requires certification by counsel that he or she has discussed the ADR brochure with client.

- Recommendation 7-6 calls for a questionnaire to monitor the effectiveness of the settlement process.

- Recommendation 7-7 seeks a mechanism for an eve-of-trial settlement conference.

- Recommendation 7-8 supports the continuation of the Adjunct Settlement judge program which has been highly successful and wifely praised in the Northern District of Oklahoma.

- Recommendation 7-9 urges the institutionalization of the Adjunct Settlement Judge Program in the district.

- Recommendation 7-10 supports the concept of assigning senior Adjunct Settlement judges (i.e., an Adjunct Settlement judge who, over several years of service in the program, has demonstrated exceptional skills at settlement and has been so designated by the District Court Judges) to cases that warrant such treatment.

- Recommendation 7-11 encourages the Court to continue to experiment with various ADR methods, including summary jury trial.

- Recommendation 7-12 rejects the use of court annexed arbitration in the Northern District of Oklahoma.

- Recommendation 7-13 supports the formalization of a set of guidelines to govern settlement conferences.

- Recommendation 7-14 supports the establishment of a permanent ADR Committee to advise the Court on ADR programs and to implement the ADR recommendations of the Advisory Group.

2. Five Techniques of Litigation Management and Cost and Delay Reduction of 28 U.S.C. § 473(b)

Section 473(b) of the CJRA (28 U.S.C. § 473(b)) requires each United States district court, in consultation with its Advisory Group, to consider five specific techniques when formulating the provisions of its civil justice expense and delay reduction plan.

a. Discovery Case Management Plans

Section 473(b)(1) requires each United States district court, in consultation with its Advisory Group, to consider a requirement that counsel for each party to a case jointly present a discovery case management plan for the case at the initial pretrial conference.

- Recommendation 3-2 encourages the Court to schedule an early Article III judge conference in each case, concurrent with

filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of anticipated discovery costs.

- Recommendation 4-1 requires the parties to submit a joint preliminary discovery plan to the Court within a short time after the filing of a responsive pleading by the defendant.

- Recommendation 4-2 encourages the Court to consider setting preliminary limits on the amount of all forms of discovery, with attorneys later having the right to ask to expand or reduce discovery.

b. Attendance at Pretrial Conferences of an Attorney Having Binding Authority

Section 473(b)(2) requires each United States district court, in consultation with its Advisory Group, to consider a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

- The Local Rule in the Northern District of Oklahoma requires the attorney, who will conduct the trial, to be present at the pretrial conference. This practice has worked well in this district and the Advisory Group would not recommend that it be changed.

c. Signature of Party on All Requests for Extension

Section 473(b)(3) requires each United States district court, in consultation with its Advisory Group, to consider a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request.

- The practice in the Northern District of Oklahoma has been to have counsel, rather than client, request extensions of time. This practice has worked well for this district and Recommendation 4-5 supports the continuation of that practice.

d. Implementation of an Early Neutral Evaluation Program

Section 473(b)(4) requires each United States district court, in consultation with its Advisory Group, to consider a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early

in the litigation.

- Recommendation 3-2 encourages the Court to schedule an early Article III judge conference in each case, concurrent with filing the joint discovery plan by the parties thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

e. Availability of Party Representative at Settlement Conferences

Section 473(b)(5) requires each United States district court, in consultation with its Advisory Group, to consider a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.

- The current practice in the Northern District is to require the litigant who has settlement authority, as well as the litigant's attorney, to be present at the settlement conference. This practice has worked well in this district and the Advisory Group would not recommend that it be changed.

D. Advisory Group's Recommendation to the Court as to a Plan

The Advisory Group recommends that the United States District Court of the Northern District of Oklahoma adopt the proposed plan found in Appendix C of this report. This proposed plan has been formulated to account for the special needs and concerns of the litigants, attorneys, judges, and other court personnel in this district. This proposed plan incorporates the recommendations of the Advisory Group found in Section III.A of this report. The Advisory Group believes that this plan is more likely to address those needs and concerns than a generic plan formulated at the national level.

E. Legislative Recommendations

1. Federal Rules of Civil Procedure--New Federal Rule of Civil Procedure 26

Recommendation Leg.1: The Court should carefully review new Federal Rule of Civil Procedure 26 (effective January 1, 1993) and if the new Rule, in the Court's judgment, will add to expense and delay in the civil justice system, so notify the appropriate parties so its repeal can be addressed.

The new Federal Rules of Civil Procedure 26 deals with voluntary disclosure and cooperative discovery. It provides that

the plaintiff's attorney must furnish all the information he or she believes that the defendant might like to have about the plaintiff's side of the case within 30 days after the complaint has been filed. The defendant's attorney has to supply the same within 30 days thereafter.

Although new Rule 26 appears to be consistent with the object of the Civil Justice Reform Act of cutting costs and eliminating delays, new Rule 26 may well prove to be unworkable, and in fact, increase costs and create delays in the civil justice system.

2. 28 United States Code § 636

Recommendation Leg.2: Congress should revise 28 U.S.C. § 636 so a party could preserve an issue for ultimate appeal to the Circuit Court without first appealing a ruling of the Magistrate Judge to the District Court.

Under 28 U.S.C. § 636, a party must appeal a ruling by the Magistrate judge to the District Court in order to preserve an issue for appeal to the Circuit Court. Under this rule, litigation time would be increased if the Magistrate judges rule on dispositive motions because there would be two appeals (one to the District Court and the second to the Circuit Court) rather than one (from the District Court to the Circuit Court). If the statute were changed so the issue were preserved without an appeal to the District Court, the Magistrate Judge could, if the parties consented, rule on dispositive motions, speed the process, and save the parties time and expense.

3. The Judicial Nomination and Confirmation Process

Recommendation Leg.3: Congress and the Executive Branch should revise the judicial nomination and confirmation process so Districts are not forced to operate shorthanded, thus adding costs and delays to the civil justice system.

The costs and delays in the civil justice system are greatly increased when a Court is required to operate shorthanded. For example, the single most articulated contributor to increased costs and delays is the fact that judges are not able to rule on dispositive motions in a timely fashion. The frustration in a District is exacerbated when a new judgeship has been authorized or a judge takes senior status and nomination for the vacancy has been made but confirmation has not been completed. The Advisory Group feels that the nomination and confirmation process must be reviewed and an accelerated process adopted.

IV. CONCLUSION

The Northern District of Oklahoma has operated well despite a heavy case load and the lack of personnel.

- The residents of the Northern District of Oklahoma are fortunate to have very able Judges, Magistrate Judges, and Court personnel who are dedicated to providing outstanding service to the District.
- Notwithstanding two judicial vacancies in the District (the Court is operating with 2 of its 3.67 judges), cases are disposed within one year on an average.
- The District maintains an active adjunct settlement judge program which at no cost to the court or litigants results in settlements of approximately 50% of the cases assigned for conference.
- The Court has been creative in designing specialized processes to address complex litigation.
- Two American Inns of Court Chapters sponsored by the sitting judiciary spread knowledge of practice and ethics through the young lawyer community and contribute to the cooperative spirit among attorneys within the District.
- The Clerk's Office is dedicated to providing service to its patrons.
- The new automation system will facilitate the flow of information between the Clerk's Office and the Court and the Clerk's Office and the Practicing Bar.
- The litigant and lawyer questionnaires report a firm belief that matters are fully and fairly treated in this court.

After a detailed review of the operations of the Northern District of Oklahoma, the CJRA Advisory Group has suggested not major but minor changes to fine tune the process. The Recommendations of the Advisory Group detail these changes and discuss their impact on cost and delay. The most serious problem in the District is the time necessary for a determination on a dispositive motion. This problem will be addressed when the Court reaches its full complement of judges.

APPENDICES

APPENDIX A. MEMBERS AND EX OFFICIO MEMBERS OF THE ADVISORY GROUP

Alex K. Adwan has been the editor of the editorial pages of the Tulsa World since 1981. He joined the Tulsa World as Washington correspondent in 1967 and became associate editor in 1972. Mr. Adwan earned his B.A. in Journalism from the University of Oklahoma. Mr. Adwan worked for United Press International from 1960 to 1967, heading bureaus in Tulsa, Houston, and Oklahoma City. Earlier he worked as a reporter and editor for newspapers in Pauls Valley and Wewoka and was managing editor and co-owner of The Seminole Producer. Mr. Adwan is a member of the Oklahoma Journalism Hall of Fame and has been honored by the University of Oklahoma School of Journalism and Rogers State College as a Distinguished Graduate.

D. Gregory Bledsoe received his J.D. from The University of Tulsa in 1979 and has been involved in the private practice of law since that time. Since 1984, he has practiced in the field of employment discrimination and civil rights litigation, primarily in federal court. He is currently a member of and a past officer (secretary) of the Labor Law Section of the Oklahoma Bar Association,the Oklahoma Trial Lawyers Association and the National Employment Lawyers Association. He has been on the Board of Directors of Legal Services of Eastern Oklahoma since 1981 and its president during 1988. He is an Adjunct Settlement Judge for the Northern District of Oklahoma.

Honorable Thomas R. Brett, an ex-officio member of the Advisory Group, is a United States District Judge for the Northern District of Oklahoma. He earned a B.B.A. (1953), LL.B. (1957), and J.D. (1971) from the University of Oklahoma.

Judge Brett is a Fellow of the American College of Trial Lawyers, Honorary Member of the Order of the Coif, past President of the Tulsa County and Oklahoma Bar Associations, and a past member of the Oklahoma University Board of Regents. Prior to taking the oath of office as United States District Judge on November 5, 1979, Judge Brett was Assistant County Attorney for Tulsa County and a member the Tulsa law firms of Hudson, Hudson, Wheaton, Kyle & Brett, and Jones, Givens, Brett, Gotcher, Doyle & Bogan. Judge Brett is the founder of the Robert D. Hudson and W. Lee Johnson American Inns of Court.

Alan R. Carlson, a partner in the firm of Garrison, Brown, Carlson & Buchanan of Bartlesville, Oklahoma, has been engaged in the practice of law since 1973, with emphasis on personal injury, products liability and civil litigation. Mr. Carlson earned his B.S. in Industrial Engineering from Oklahoma State University (1970) and his J.D. (1973) from The University of Tulsa. He is a member of the Oklahoma Criminal Defense Lawyers Association, the Oklahoma Trial Lawyers Association (Board of Directors and Executive Committee since 1981), The American Academy of Forensic Science, Trial Lawyers for Public Justice, the National Association of Criminal Defense Lawyers, and the Defense Research

Institute. Mr. Carlson has written a number of articles for the Oklahoma Bar Association Journal, the Oklahoma Trial Lawyers Association Journal, and the Oklahoma Criminal Defense Lawyers Association Journal. Mr. Carlson has lectured extensively in the fields of trial advocacy and personal injury lawsuits.

Honorable H. Dale Cook, an ex officio member of the Advisory Group, was the Chief Judge of the United States District Court of the Northern District of Oklahoma when the Advisory Group was appointed. Judge Cook was appointed to the United States District Court for the Tenth Circuit on December 24, 1974, and entered duty on December 31, 1974. Judge Cook took senior status on January 1, 1992. Judge Cook earned his B.S. in Business (1949), his J.D. (1950) from the University of Oklahoma. He has served as a county attorney, Assistant United States Attorney, and was in private practice before joining the Court. Judge Cook is a Fellow of the American Bar Foundation and devised a very successful settlement program in the Northern District of Oklahoma. During Judge Cook's tenure as a United States District Judge, he served as a member of the Committee on Administration of the Federal Magistrates System of the Judicial Conference of the United States, as a member of the Tenth Circuit Judicial Council and is a past President of the Tenth Circuit District Judges' Association.

Michael F. Costello is employed by American Airlines at their corporate headquarters as Counsel, Employee Relations. Mr. Costello is a graduate of Southern Illinois University. He was first employed by American Airlines in Chicago in 1972 and since that time has held a number of supervisory and middle management positions within the Operations Department. Former assignments within Employee Relations include: Manager, Field Employee Relations at the Tulsa Maintenance Base in Tulsa, Oklahoma; Manager, Field Employee Relations at the Raleigh/Durham Airport located in the Research Triangle Part of North Carolina; and Supervisor, Field Employee Relations at the O'Hare Airport in Chicago, Illinois.

B. Hayden Crawford is a partner in the firm of Crawford, Crowe & Bainbridge. He earned his A.B. and J.D. degrees from the University of Michigan. Mr. Crawford was the Law Clerk to United States District Judge Royce H. Savage, an Assistant City Prosecutor for the City of Tulsa, Alternate Municipal Judge for the City of Tulsa, United States District Attorney for the Northern District of Oklahoma, United States Assistant Deputy Attorney General (in charge of all United States Attorneys), and the Oklahoma member of the Advisory Committee to the United States Court of Appeals for the Tenth Circuit (1991-present).

Honorable James O. Ellison, an ex-officio member of the Advisory Group, became Chief Judge of the United States District Court for the Northern District of Oklahoma on January 1, 1992. Judge Ellison earned his B.A. (1948) and LL.B. (1951) from the University of Oklahoma. Prior to joining the bench, Judge Ellison was a partner in the firm Boone, Ellison & Smith. He is

a Trustee for the Hillcrest Medical Center.

Professor Martin A. Frey, Reporter to the Advisory Group, is Professor of Law at the University of Tulsa College of Law where he teaches courses in contracts, secured transaction, bankruptcy, and alternative methods of dispute resolution. He has earned a B.S.M.E. from Northwestern University, a J.D. from Washington University (St. Louis), and a LL.M. from George Washington University. He currently serves as a senior Adjunct Settlement Judge for the United States District Court for the Northern District of Oklahoma and frequently serves on accreditation teams for the ABA's Committee on Accreditation and Admission to the Bar. Professor Frey has co-authored "An Introduction to Contracts and Restitution for Paralegals" and "An Introduction to Bankruptcy Law," both published by West Publishing Co.

Tony M. Graham is the United States Attorney for the Northern District of Oklahoma. He earned his J.D. degree from The University of Tulsa. After several years in private practice, he was appointed as Special District Judge in the Fourteenth Judicial District, serving in the criminal and civil divisions in Tulsa County. In October 1982, he was appointed District Judge and served in that office until 1987 when he became the United States Attorney for the Northern District. Mr. Graham has taught a number of CLE courses, been a faculty advisor to the National Judicial College, and has taught as an adjunct professor at The University of Tulsa College of Law.

Mark Iola is a partner in the Tulsa law firm of Ungerman & Iola. He obtained his undergraduate education at George Washington University in Washington, D.C., and received his legal education at the University of Oklahoma. He practices extensively in Federal Court with a primary emphasis in asbestos litigation, toxic injury and other products' liability cases.

Fred Isaacs is Senior Vice President of Transportation of MAPCO, Inc, and President of Mid-America Pipeline Company and Seminole Pipeline Company. He earned his B.S. in Electrical Engineering from Missouri School of Mines and then served for five years in the United States Navy. After returning to school and earning his M.S. in Electrical Engineering from the University of Missouri, Mr. Isaacs joined Phillips Pipeline Company as a design and construction engineer. Several years later he became research engineer for Applied Automation, Inc., a subsidiary of Phillips. In 1969 Mr. Isaacs joined Mid-America Pipeline Company as Senior Engineer and worked his way up to President.

Don L. Jemison is Senior Litigation Counsel for the Phillips Petroleum Company, Bartlesville, Oklahoma. He earned his B.S. at Oklahoma State University and his J.D. at the University of Oklahoma. In addition to his experience at Phillips, Mr. Jemison has been in private practice and has served as an attorney for Marathon Oil Company. He has also been the President of the Pontotoc County Bar Association.

Jenk Jones, Jr. is a consultant, writer and copy editor for the Tulsa Sentinel. Prior to that time, he was the Editor and Publisher of the Tulsa Tribune until it closed in September 1992. He earned his B.A. in Political Science (1958) from the University of Colorado. Mr. Jones has been a sports writer for the Minneapolis Tribune; a reporter and news editor for the Anchorage Times; and a state capital correspondent, a Washington correspondent, copy editor, chief copy desk, assistant city editor, assistant managing editor, managing editor, executive editor, editor, and editor/publisher for the Tulsa Tribune. Mr. Jones has been the treasurer and past director of the AP Managing Editors's Association and a member of the American Society of Newspaper Editors.

Richard M. Lawrence, ex officio member of the Advisory Group, has been the Clerk of the United States District Court for the Northern District of Oklahoma since September 3, 1991. Prior to his appointment, he was the Chief Deputy in the United States District Court for the District of New Mexico for nine years. Earlier professional experiences include positions as Manpower Development Specialist with the United States Department of Labor in Washington, D.C., Manpower Planner with the City of Albuquerque, and an Economist for the State of New Mexico.

Joseph W. Morris is a member of the law firm of Gable & Gotwals, Inc., Tulsa, Oklahoma, since 1984. Judge Morris earned his A.B. and J.D. degrees from Washburn University and his LL.M. and S.J.D. degrees from the University of Michigan. He was formerly General Counsel of Amerada Petroleum Corporation; Dean of the College of Law at The University of Tulsa; Chief Judge, United States District Court for the Eastern District of Oklahoma; and Vice President and General Counsel of Shell Oil Company, Houston Texas. Judge Morris is a member of the National Panel of Distinguished Neutrals of the Legal Program of the Center for Public Resources and a member of the National Panel of Arbitrators of the American Arbitration Association. Judge Morris is an experienced mediator, mini-trial neutral and court-appointed settlement judge and in 1991 taught ADR at the International Development Law Institute, Rome, Italy.

K.L. (Ken) Smalley is a Senior Vice President of Phillips Petroleum Company and is responsible for the Company's gas, gas liquids and coal operations. Mr. Smalley, a native of Clinton, Oklahoma, earned a B.S. in Engineering from the University of Oklahoma (1954). Mr. Smalley began his Phillips career in 1954 in Dumas, Texas and transferred to Brussels, Belgium in 1968. While living in Brussels he served for five years as the President of the Board of the International School of Brussels. He was warded the Order of Leopold from the Belgium Government for his work in developing industry in Belgiam. Mr. Smalley serves on the Boards of Directors of the Institute of Gas Technology, the Gas Research Institute and the Natural Gas Supply Association.

L.K. Smith has been a partner in the firm Boone, Smith,

Davis, Hurst and Dickman since 1963. He earned his B.A. and LL.B. from the University of Oklahoma. He has served as Law Clerk for United States District Judge Royce H. Savage and as First Assistant U.S. Attorney, Northern District of Oklahoma. Mr. Smith is a Fellow of the American College of Trial Lawyers (State Chair 1991-92) and a member of the Hillcrest Medical Center Foundation Board and University of Oklahoma Associates Council. He has also served on the Gilcrease Museum Association Board of Directors.

John H. Tucker, Chairperson of the Advisory Group, is a member of the firm of Rhodes, Hieronymus, Jones Tucker & Gable. He earned a B.A. (1964) and J.D. (1966) from the University of Oklahoma. He is a fellow of the American College of Trial Lawyers and a fellow of the American Bar Association and the Oklahoma Bar Association. Mr. Tucker is a Barrister in the W. Lee Johnson American Inn of Court.

Honorable John Leo Wagner, ex officio member of the Advisory Group, is a United States Magistrate Judge for the United States District Court for the Northern District of Oklahoma. He earned his B.A. (1976) and J.D. (1979) from the University of Oklahoma. Magistrate Wagner serves on ADR committees of both the Tulsa County Bar Association and Oklahoma Bar Association and is Chair of the ADR Subcommittee of the Northern District's CJRA Advisory Group. He has served as a Magistrate Judge since 1985 and was instrumental in implementing the Northern District's Adjunct Settlement Judge Program.

Judge Wagner is a member of the Federal Magistrate Judge's Association and serves on the Education Committee of the Tenth Circuit Court of Appeals. He is also a founding Master of Tulsa's Robert D. Hudson American Inn of Court and currently serves as its President.

Keith Ward is a partner in the firm of Tilly & Ward. He earned his B.A. from Central State University and his J.D. from the University of Oklahoma. Mr. Ward has served as an Assistant District Attorney for the Ninth Judicial District of Oklahoma (Payne and Logan Counties) and an Assistant United States Attorney for the Northern District of Oklahoma. He is the recipient of the United States Department of Justice Director's Award, a member of the Oklahoma Criminal Defense Lawyers Association, and an Adjunct Settlement Judge for the Northern District of Oklahoma.

Honorable Jeffrey S. Wolfe, ex-officio member of the Advisory Group, is a United States Magistrate Judge for the Northern District of Oklahoma. He earned his B.A. (1973) from the University of San Diego, his J.D. (1976) from the California Western School of Law, and his LL.M. (1990) from the University of San Diego School of Law. Magistrate Judge Wolfe has taught trial practice and criminal law as an adjunct professor at The University of Tulsa College of Law and legal research and writing full-time at California Western School of Law.

APPENDIX B. STATEMENT OF OPERATING PROCEDURES

After the appointment of the Advisory Group by The Honorable H. Dale Cook, the Chief Judge of the United States District Court for the Northern District of Oklahoma, an organizational meeting of the Group was held with John Tucker, the chair, presiding (May 7, 1991). Mr. Tucker and Judge Cook discussed the Civil Justice Reform Act and the role of the Advisory Group. At the meeting, six subcommittees were formed, each with its own tasks. The members of the Advisory Group volunteered to serve on one or more of the subcommittees. Each subcommittee set its own agenda and began work. The Statistics Subcommittee developed questionnaires for attorneys and litigants. This subcommittee later compiled the results from these questionnaires. The Courts Subcommittee interviewed the Judges, Magistrate Judges, Law Clerks, and other major court personnel. The Lawyers Subcommittee interviewed attorneys who practice regularly before the Northern District of Oklahoma. The Juror Interview Subcommittee interviewed jurors who participated on Northern District juries. The Litigants Subcommittee interviewed litigants whose cases were heard in the Northern District. The ADR Subcommittee studied the use of ADR in the district and interviewed the adjunct settlement judges.

A significant amount of information was acquired by interview and questionnaire. The primary source of data used to analyze the caseload in the Northern District of Oklahoma was the Annual Report of the Director of the Administrative Office of the U.S. Courts. This data was supplemented by periodic Statistic Supplements, also provided by the Administrative Office. These reports contain the specific caseload data required for the Advisory Group's analysis. Additional necessary data was obtained through telephone contact with David Cook or John Shapard of the Statistics Division of the Administrative Office.

In attempting to determine the Causes of Cost and Delay in the District, the Advisory Group relied on several sources. The data compiled from the Attorney Survey conducted by the Statistics Subcommittee was the primary source of information. This data was supplemented by interviews with the Judges, Magistrate Judges, Court's Office Personnel and jury members from prior cases to obtain validation for the conclusions.

Every month or two the Advisory Group as a whole met to discuss the progress of the various subcommittees. The dialogue at each meeting of the Advisory Group was transcribed by a Certified Court Reporter. The Reporter for the Advisory Group attended a number of subcommittee meetings. The transcriptions from the Advisory Group meetings, along with the oral and written reports from the subcommittees, were developed by the Reporter into drafts for discussion by the Advisory Group. At these meetings the drafts were refined and developed. A tentative final draft was presented to the Advisory Group in December 1992. The Advisory Group met on December 11, 1992, and approved the tentative final draft.

APPENDIX C. COST AND DELAY REDUCTION PLAN

Based largely on the Recommendations in this report, the Advisory Group recommends the following plan to the United States District Court for the Northern District of Oklahoma.

1. Civil and Criminal Dockets

The Court will schedule criminal and other civil matters so as to reduce interruptions during the trial of a civil case.

2. Civil Docket Schedules

a. In a multi-week trial, the Court will schedule the jury trial for four days a week, rather than five.

b. The Court will use separate and consecutive jury selection at the beginning of the jury docket, rather than selecting a jury when each case commences.

c. The Court will encourage litigants to try their cases before a Magistrate Judge by permitting attorney voir dire, offering firm trial dates, and permitting jurors to take notes or be given a trial notebook.

3. Judicial Involvement in Pretrial Preparations

The Court will expand the present use of exhibit conferences and the preadmission of exhibits and demonstrative aids.

4. Discovery

a. Controlling Discovery

1) Discovery Plan

a) Within a short time after the filing of a responsive pleading by the defendant, the Court will order the parties to submit a joint preliminary discovery plan to the Court. This discovery plan must:

- identify principal witnesses each party would want to depose;
- outline information to be requested by formal discovery or interrogatory;
- estimate anticipated discovery costs; and
- inform the Court what dispositive motions are foreseen by the parties.

Counsel must certify to the Court that:

- the discovery plan has been reviewed with the client;
- the client has approved of the plan; and
- the client has been furnished a copy of "Alternative Dispute Resolution in the Northern District of Oklahoma" and has reviewed this pamphlet with counsel.

2) Extent of Discovery

Depending on the nature and complexity of the case, the Court, at its Article III Judge conference, will consider setting preliminary limits on the amount of all forms of discovery, with attorneys later having the right to ask to expand or reduce discovery.

3) Time for Completing Discovery

The Court will consider scheduling an early Article III judge conference in each case concurrent with filing the joint discovery plan by the parties, thus permitting a preliminary assessment of the case from the standpoint of potential dispositive motions and anticipated discovery costs.

4) Insuring Compliance with Appropriate Requested Discovery in a Timely Fashion

The Court will continue to encourage the practice of good faith compliance with appropriate requested discovery.

b. Effort by Parties to Resolve Discovery Disputes

The Court will continue to use a good faith conference requirement between opposing counsel as a condition precedent to filing a discovery motion and a motion in limine.

c. Approval of Extensions of Time

The Court will continue the practice of having counsel, rather than client, request extensions of time.

d. Voluntary Disclosure and Cooperative Discovery

The Court will continue to encourage voluntary disclosure and cooperative discovery.

e. Adjunct Discovery Judges

The Court will consider, in appropriate cases, using adjunct discovery judges to resolve discovery issues. Upon agreement of the parties, these adjunct discovery judges would be compensated by the parties.

f. Abatement of General Discovery During the Pendency of Dispositive Motions

The Court will abate general discovery in appropriate cases while dispositive motions are pending.

5. Dispositive Motions

a. The Court will rule more quickly on dispositive motions, well ahead of trial dates. This may be done by:
   - continuing to limit the length of briefs;
   - deciding some dispositive motions on briefs rather than after oral argument;
   - deciding some cases from the bench after oral argument with findings and conclusions prepared by the prevailing party; and
   - adding career or long-term law clerks as needed.

b. If 28 U.S.C. § 636 is revised so that a party could preserve an issue for ultimate appeal to the Circuit Court without first appealing a ruling of the Magistrate Judge to the District Court, a procedure will be developed whereby the parties could consent to refer dispositive motions to the Magistrate Judge. If a party wished to appeal the Magistrate Judge's ruling granting dispositive relief, the appeal would be to the Circuit Court rather than to the District Court.

c. The Court will continue its firm stance against dilatory motions.

d. The Court will consider limiting written explanatory orders to deserving cases.

e. Each District Court Judge will experiment with holding a motion docket for accelerating decisions on dispositive motions. The cases assigned to the accelerated motion docket at the Article III judge early conference may be subject to the following rules:
   - the motion, including a citation of authorities, will be limited to five pages;
   - briefs will not be filed to accompany the

motion;
- oral arguments will be subject to a time limit; and
- the Court will rule from the bench with parties to prepare appropriate findings, conclusions and orders.

6. Trial Procedures

a. Referring Cases to a Magistrate Judge

The Court will refer cases to the Magistrate Judge when the parties stipulate that they will not appeal the Magistrate Judge's ruling to the District Court.

b. Limiting the Number of Witnesses and the Time for Testifying

In every case, the Court will consider limitations on the number of expert witnesses, the number of fact witnesses and the time given to testify at trial.

c. Presenting Direct Testimony by Narrative

The Court will experiment with permitting some witnesses, especially expert witnesses, to present their evidence on direct examination either through a narrative format or through a partial narrative format.

d. Presenting Testimony by Deposition

The Court will permit some witnesses, in addition to medical experts, to present their evidence through deposition though that witness may be subject to subpoena.

e. Jury Selection

1) Pre-Service Screening Questionnaire

The Court will implement a more extensive pre-service screening questionnaire and expand the present process by which the trial judge permits each lawyer to submit and continue to submit questions for the Court to ask prospective jurors. A copy of each completed pre-service screening questionnaire should be furnished to each counsel in advance of the time the jury is called to be examined.

2) Voir Dire

The Judges will consider permitting attorney voir dire in appropriate cases to supplement the initial voir dire by the Court.

f. Experts

In an appropriate case, the Judge will consider using court-appointed independent experts. In any case where a court-appointed independent expert will be used, counsel will be given an opportunity to participate in the selection process.

7. Alternative Dispute Resolution

a. Existing Alternative Dispute Resolution Programs in the Northern District

1) Pre-trial Settlement Conference

a. The Court will continue to promote pre-trial settlement conferences.

b. The Court will promote settlement efforts at the earliest possible time and continue as appropriate.

c. If an Article III Judge makes an early intervention to evaluate a case, the Article III judge will consider suggesting an early settlement conference.

d. The Clerk's Office will distribute a brochure on alternative methods of dispute resolution to counsel to be passed on to and discussed with clients.

e. Counsel will certify in the discovery cost plan, which would be submitted to the Court prior to the early intervention by the Article III judge, that they have delivered the ADR brochure to their clients and have discussed ADR with them.

f. The settlement administrator will develop a questionnaire to be completed by both the attorneys and the litigants at a time in the process deemed appropriate by the settlement administrator.

g. To the extent that it is feasible, a mechanism will be developed to make a settlement conference available immediately before trial if, in the view of the parties, it would be beneficial to a potential settlement of the case.

2) Adjunct Settlement Judge Program

a. The Court will continue the Adjunct Settlement Judge Program at its present level of adjunct settlement judges or will increase the number of adjunct settlement judges at the discretion of the Chief Judge.

b. The Court will institutionalize, through the Clerk's Office, the scheduling, space allocation, and assignment of adjunct settlement judges to particular substantive cases, the assignment being in coordination with the Magistrate Judge who currently performs these functions.

c. The Magistrate Judge may recommend to the District Court Judge the assignment of a senior adjunct settlement judge to a case as a special project, on a paid basis, providing the case warrants such treatment and the parties consent.

3) Other Alternative Methods of Dispute Resolution Including the Summary Jury Trial

The Court will continue to experiment with various alternative methods of dispute resolution, including the summary jury trial.

b. Court Annexed Arbitration in the Northern District

The Court will <u>not</u> add court annexed arbitration in the Northern District of Oklahoma.

c. Standards for Settlement Conferences

The Court will formalize a set of guidelines to govern settlement conferences.

d. Permanent ADR Committee

The Court will establish a permanent Alternative Dispute Resolution Committee composed of members of the bar of this District and lay persons to advise the Court on ADR programs and implement the

ADR recommendations of the Civil Justice Reform Act Advisory Group, as instructed by the Court.

8. Efficient Use of Personnel

The Magistrate Judges should conduct more trials.

9. Need to Increase Personnel

a. Magistrate Judges

The Court will recommend that the number of full-time Magistrate Judges be increased from two to three.

b. Court Clerk Personnel

The Court will convert the temporary position that was made available through the Civil Justice Reform Act to a permanent position and have the new Deputy Court Clerk assume clerical responsibility for the Adjunct Settlement Judge Program and have responsibility for using the new computer system and software to monitor and report civil activity.

10. Technology

a. The Court will continue to seek appropriate funds for modern technology to improve the functioning of the Clerk's Office, the Courts, and the accessibility of information by the practicing bar.

b. As new technology becomes economically feasible, the Court will install an information system which provides full text of all filed documents in a case it monitors in chambers and in the Court.

c. The Court will expand the use of conference calls where practicable.

11. Enhancing the Quality of the Documents Submitted to the Court

As a condition to admission to practice in the Northern District of Oklahoma, the Court will require each applicant to successfully complete a CLE course on the local rules and on how to write briefs for this district. The CLE course will be designed and offered by the Grievance and Admission Committees of the Northern District of Oklahoma.

12. Educational Mission--Judicial Internships

The Court will continue to utilize Judicial Interns from The University of Tulsa College of Law and other ABA accredited law schools.

13. Reforming Local Rules

a. The Court will reform the Local Rules so they are consistent with the Plan adopted by the Court and with increased use of technology.

b. The Court will revise the local rules to add a standing ADR Committee.

c. The Court will continue to work with the Chief Judges of the Eastern and Western Districts of Oklahoma to develop local rules that will apply uniformly to the three Oklahoma districts.

SAMPLE

ALTERNATE DISPUTE RESOLUTION IN THE NORTHERN DISTRICT OF OKLAHOMA

The Northern District of Oklahoma has developed an Alternative Dispute Resolution process which incorporates a number of creative methods to assist in resolving disputes at bar. Recognizing that the majority of cases filed are settled prior to trial, these services have been adopted to enhance the likelihood of settlement, reduce the costs associated with litigation, and provide for innovative solutions to often complex problems. A secondary benefit from these enhancements is an expedited docket for all the customers of the Court.

Since it's inception in 1986, the Alternate Dispute Resolution Process in the Northern District has met with much success. Over 64% of the cases which were involved in Settlement Conferences, either with a Magistrate or Adjunct Settlement Judge, resulted in a settlement prior to trial that was satisfactory to both parties. This is significant, as the parties involved in these lawsuits did not incur the costs usually associated with a trial such as, expert witness fees, discovery expenses, attor-

At the time a case is filed, two separate but parallel tracks are established, the Trial Track and the Settlement Track. Target dates are established, such as a trial date, close of discovery, etc., which are used as milestones to track the case's progress. These milestones are intended to insure prompt and ever forward movement of the case. All cases are scheduled for a Settlement Conference, with the hope that some cases which may need a little outside assistance in the settlement process, can get the needed help. Much latitude and creativity is used in fashioning this process, and a list of the currently available options appears below.

The two track system has been successful in reducing costs for the litigants and increasing the efficiency of the Court without compromising the fair and just resolution of disputes. As a litigant in this District, you are encouraged to seriously consider the options available to you, to aid and assist in the early resolution of your case.

1. Settlement Conference

Judicial settlement conferences today occur throughout the litigation process, sometimes as early as the initial scheduling conference, as late as the final pre-trial conference, or even during the trial itself. Courts with multiple ADR options report that their settlement conference programs are the most widely used and the best accepted of their ADR efforts. The Judicial settlement conference program in the Northern District of Oklahoma is conducted with the highest sensitivity to protecting proprietary communications and trial strategies, while providing an inexpensive way for the litigants to attempt to resolve their dispute or at least to learn more about their adversary's position.

In the Northern District of Oklahoma, settlement conferences are primarily conducted by Adjunct Settlement Judges. These individuals have been carefully selected by the Court based upon their level of expertise in a particular area of Law. They receive specialized training to enable them to assist the parties in a dispute to consider all aspects of the case, enhancing the likelihood of settlement. The Adjunct Settlement Program in the Northern District boasts a 54% success rate in resolving disputes prior to reaching trial.

2. Mini-Trial

The minitrial is a nonbinding settlement process that sees limited use in the Northern District. In a minitrial, settlement authorized representatives - usually senior executives - listen to short case presentations by their attorneys. The hearing is informal, with no witnesses and a relaxation of the rules of evidence and procedure. A Judge or Magistrate will preside over the one or two day hearing, and afterwards, the clients will be required to negotiate settlement, often with the help of a neutral advisor. If the settlement discussions fail, the case will proceed to trial.

The minitrial promotes settlement in several ways. The informal hearing crystallizes the case for all sides, and directly exposes clients to the other parties views. The post-hearing talks capitalize on the senior executives negotiating skills. Minitrials are successful in many cases; in a 1986 ABA survey, 24 of 28 cases reached settlement without trial.

SAMPLE

3. Summary Jury Trial

A Summary Jury Trial can be a binding or nonbinding process in which real jurors hear an abbreviated case presentation from the parties. A Judge or Magistrate presides over the hearing where there are only one or two witnesses per side and the rules of evidence are relaxed.

Client principals who are authorized to settle the case are required to attend the proceedings. In a binding case, the jurors render a verdict based upon limitations agreed to by the parties prior to accepting the process. These limitations are often, but not always, considerably less than the parties exposure to costs and damages demanded.

In a nonbinding case, the jurors render an "advisory" verdict following deliberation. The verdict becomes the starting point for settlement negotiations among the clients, lawyers, and perhaps the Judge or Magistrate. If no settlement is reached the parties may proceed to trial.

5. Private Mediation

Mediation is the negotiation for settlement among the parties to a dispute, by a nonparty neutral. Unlike a Judge or an Abritrator, the mediator has no power to impose a solution on the parties. The mediators sole function is to help the disputants resolve their matter through consensus and agreement.

Mediation is often a desirable alternative late in the progress of the case, when settlement appears possible, but the scheduling and timing do not permit the Court to facilitate the process.

ALTERNATE DISPUTE RESOLUTION In the NORTHERN DISTRICT OF OKLAHOMA

A SUMMARY OF AVAILABLE SERVICES

APPENDIX E. SETTLEMENT CONFERENCE ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

_____	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	No. -C- -
	)	
	)	
_____	)	
	)	
Defendant(s).	)	

SETTLEMENT CONFERENCE ORDER

PLEASE READ THIS ORDER CAREFULLY! **It has been revised as of May 5, 1992. The latest revisions appear in bold print.**

Judge _____ has referred this case for a settlement conference and directed the Clerk to enter this Order. _____ will act as a settlement judge who will not be involved in the actual trial of the case and who will assist in an objective appraisal and evaluation of the lawsuit. The following are mandatory guidelines for the parties in preparing for the settlement conference.

1. PURPOSE OF CONFERENCE

The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement judge of every aspect of the lawsuit. This educational process provides the advantage of permitting the settlement judge to privately express his or her views concerning the parties' claims. The settlement judge may, in his or her discretion, converse with the lawyers, the parties, the insurance representatives or any one of them outside the hearing of the others. Ordinarily, the settlement conference provides the parties with an enhanced opportunity to settle the case, due to the assistance rendered by the settlement judge.

2. FULL SETTLEMENT AUTHORITY REQUIRED

In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for the conference. This requires the presence of your client or, if a corporate entity, an authorized representative of your client, who is not a lawyer who has entered an appearance in the case.

For a defendant, such representative must have final settlement authority to commit the company to pay, in the representative's discretion, a settlement amount recommended by the settlement judge up to the plaintiff's prayer (excluding punitive damage prayers in excess of $100,000.00) or up to the plaintiff's last demand, whichever is lower.

For a plaintiff, such representative must have final authority, in the representative's discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount recommended by the settlement judge down to the defendant's last offer.

The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. A governmental entity may be granted permission to proceed with a representative with limited authority upon proper application pursuant to Local Court Rule 17.1A.

3. EXCEPTION WHERE BOARD APPROVAL REQUIRED

If Board approval is required to authorize settlement, attendance of the entire Board is requested. The attendance of at least one sitting member of the Board (preferably the Chairman) is absolutely required.

4. APPEARANCE WITHOUT CLIENT PROHIBITED

Counsel appearing without their clients (whether or not you have been given settlement authority) will cause the conference to be canceled and rescheduled. Counsel for a government entity may be excused from this requirement upon proper application under Local Court Rule 17.1A.

5. AUTHORIZED INSURANCE REPRESENTATIVE(S) REQUIRED

Any insurance company that (1) is a party, (2) can assert that it is contractually entitled to indemnity or subrogation out of settlement proceeds, or (3) has received notice or a demand pursuant to an alleged contractual requirement that it defend or pay damages, if any, assessed within its policy limits in this case must have a fully authorized settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, in the representative's discretion, an amount recommended by the settlement judge within the policy limits.

The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. An insurance representative authorized to pay, in his or her discretion, up to the plaintiff's last demand will also satisfy this requirement.

6. ADVICE TO NON-PARTY INSURANCE COMPANIES REQUIRED

Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this order.

7. PRE-CONFERENCE DISCUSSIONS REQUIRED

Prior to the settlement conference, the attorneys are directed to discuss settlement with their respective clients and insurance representatives, and opposing parties are directed to discuss settlement so the parameters of settlement have been explored well in advance of the settlement conference. This means the following:

By _____, 19 93 , plaintiff must tender a written settlement offer to defendant and the assigned settlement judge.

By _____, 19 93 , each defendant must make and deliver a written response to plaintiff and the assigned settlement judge. That response may either take the form of a written substantive offer, or a written communication that a Defendant declines to make any offer.

Silence or failure to communicate as required is not itself a form of communication which satisfies these requirements.

8. SETTLEMENT CONFERENCE STATEMENT REQUIRED

One copy of each party's settlement conference statement of each party must be submitted directly to the judge(s) checked below:

☐ United States Magistrate Judge _____
U.S. Courthouse, 333 W. 4th St.
Tulsa, OK 74103

☐ Adjunct Settlement Judge _____
_____
Tulsa, OK _____

Settlement Conference Statements must be directly submitted no later than ____ _____, 19 93 . They must not be filed.

Your statement should set forth the relevant positions of the parties concerning factual issues, issues of law, damages, and the settlement negotiation history of the case, including a recitation of any specific demands and offers that may have been conveyed. Copies of your settlement conference statement are to be promptly transmitted to all counsel of record.

The settlement conference statement may not exceed five (5) pages in length and will not be made a part of the case file. Lengthy appendices should not be submitted. Pertinent evidence to be offered at trial should be brought to the settlement conference for presentation to the settlement judge if thought particularly relevant.

9. CONFIDENTIALITY STRICTLY ENFORCED

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

10. CONTINUANCES

Applications for continuance of the settlement conference will not be entertained unless such application is submitted to the settlement conference judge in writing at least seven (7) days prior to the scheduled conference. Any such application must contain both a statement setting forth good cause for a continuance and a recitation of whether or not the continuance is opposed by any other party.

11. SETTING

The settlement conference is set on _____, the 12TH day of _____, 19 93, at _____ o'clock p.m., in Tulsa, Oklahoma. Parties should report to Magistrate's Courtroom #2 on the Third Floor of the Federal Courthouse.

12. NOTIFICATION OF PRIOR SETTLEMENT REQUIRED

In the event a settlement between the parties is reached before the settlement conference date, parties are to notify the settlement judge immediately.

13. CONSEQUENCES OF NON-COMPLIANCE

Upon certification by the Settlement Judge or Adjunct Settlement Judge of circumstances showing non-compliance with this order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

Dated this ____ day of _____, 19 __.

RICHARD M. LAWRENCE, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

By: _____
Deputy Clerk

cc: ALL COUNSEL OF RECORD
Revised 5-5-92

APPENDIX F. CIVIL JUSTICE REFORM ACT OF 1990

UNITED STATES CODE
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART I--ORGANIZATION OF COURTS
CHAPTER 23--CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

§ 471. Requirement for a District Court Civil Justice Expense and Delay Reduction Plan

There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

§ 472. Development and Implementation of a Civil Justice Expense and Delay Reduction Plan

(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include--
  (1) an assessment of the matters referred to in subsection (c)(1);
  (2) the basis for its recommendation that the district court develop a plan or select a model plan;
  (3) recommended measures, rules and programs; and
  (4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c) (1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall--
    (A) determine the condition of the civil and criminal dockets;
    (B) identify trends in case filings and in the demands being placed on the court's resources;
    (C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and
    (D) examine the extent to which costs and delays could

be reduced by a better assessment of the impact of new legislation on the courts.

(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to--

(1) the Director of the Administrative Office of the United States Courts;

(2) the judicial council of the circuit in which the district court is located; and

(3) the chief judge of each of the other United States district courts located in such circuit.

§ 473. Content of Civil Justice Expense and Delay Reduction Plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer in--

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that--

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring

compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer--

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to--

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

(6) authorization to refer appropriate cases to alternative dispute resolution programs that--

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the

reasons for their failure to do so;

(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

§ 474. Review of District Court Action

(a) (1) The chief judge of each district court in a circuit and the chief judge of the circuit shall, as a committee--

(A) review each plan and report submitted pursuant to section 472(d) of this title; and

(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

(2) The chief judge of a circuit may designate another judge of the court of appeals of that circuit, and the chief judge of a district court may designate another judge of such court, to perform that chief judge's responsibilities under paragraph (1) of this subsection.

(b) The Judicial Conference of the United States--

(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

§ 475. Periodic District Court Assessment

After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

§ 476. Enhancement of Judicial Information Dissemination

(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer--
  (1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;
  (2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and
  (3) the number and names of cases that have not been terminated within three years after filing.

(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semi-annual report prepared under subsection (a).

§ 477. Model Civil Justice Expense and Delay Reduction Plan

(a) (1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.
  (2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

§ 478. Advisory Groups

(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.
(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.
(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.
(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.
(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.
(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

§ 479. Information on Litigation Management and Cost and Delay Reduction

(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.
(b) The Judicial Conference of the United States shall, on a continuing basis--
    (1) study ways to improve litigation management and dispute resolution services in the district courts; and
    (2) make recommendations to the district courts on ways to improve such services.
(c) (1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the

Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

§ 480. Training Programs

The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

§ 481. Automated Case Information

(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

(b) (1) In carrying out subsection (a), the Director shall prescribe--

(A) the information to be recorded in district court automated systems; and

(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

§ 482. Definitions

As used in this chapter, the term "judicial officer" means a United States district court judge or a United States magistrate.

APPENDIX G. CUSTOMER OPINION SURVEY--ATTORNEY QUESTIONNAIRE

APPENDIX H. CUSTOMER OPINION SURVEY--LITIGANT'S QUESTIONNAIRE

APPENDIX I. STATISTICAL RESULTS FROM THE ATTORNEY'S QUESTIONNAIRE

APPENDIX J. STATISTICAL RESULTS FROM THE LITIGANT'S QUESTIONNAIRE

Appendices G, H, I, and J have been printed separately and are available upon request.